

1979 REVISED CODE *of* WASHINGTON



Volume 6

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Title 58

BOUNDARIES AND PLATS

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Chapter 58.04 BOUNDARIES

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58.04.010 Corners and lines may be established—Procedure—Expense. Whenever a majority of the resident owners of any section or part or parts of any section of land in this state, after having given at least ten days' notice to all other persons, or to their agents, holding land in the same section or part or parts of the section, as the case may be, who reside in the township,

shall desire to have their corners and lines, or any of them, established, relocated or perpetuated, such surveyor shall proceed to make the required surveys, and the expense thereof shall be borne by all the persons benefited in proportion to the amount of work done for each, to be determined by the surveyor; and if any person thus benefited, whether a nonresident or otherwise, shall refuse or neglect to pay his share of such expense, such surveyor shall certify the same, and to whom due, to the county assessor, who shall assess it upon the land of such person, to be collected in the same manner as other taxes, and held subject to the order of the person named in the surveyor's certificate as being entitled to the same. [1895 c 77 § 9; RRS § 4154.]

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

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

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

Only one form of action—Civil action: RCW 4.04.020.

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

58.04.040 Proceedings, conduct of—Costs. The proceedings shall be conducted as other civil actions, and the court, on final decree, shall apportion the costs of the proceedings equitably, and the cost so apportioned, shall be a lien upon the said lands, severally, as against any transfer or incumbrance made of, or attaching to said lands, from the time of the filing of the complaint: *Provided*, A notice of lis pendens, is filed in the auditor's

office of the proper county, in accordance with law. [1886 p 105 § 3; RRS § 949.]

Chapter 58.08 PLATS—RECORDING

Sections

58.08.010	Town plat to be recorded—Requisites.
58.08.015	Effect of donation marked on plat.
58.08.020	Additions.
58.08.030	Plats to be acknowledged—Certificate that taxes and assessments are paid.
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58.08.050	Official plat—Platted streets as public highways.

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

Record of platted tide and shore lands: RCW 79.01.436.

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

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

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

58.08.030 Plats to be acknowledged—Certificate that taxes and assessments are paid. Every person whose duty it may be to comply with the foregoing regulations shall at or before the time of offering such plat for record, acknowledge the same before the auditor of the proper county, or any other officer who is authorized by law to take acknowledgment of deeds, a certificate of which acknowledgment shall be indorsed on or annexed to such plat and recorded therewith. In all cases where any person or persons, corporation or corporations shall desire to file a plat, map, subdivision or replat of any

property or shall desire to vacate the whole or any portion of any existing plat, map, subdivision or replat, such person or persons, corporation or corporations must, at the time of filing the same for record or of filing a petition for vacation thereof, file therewith a certificate from the proper officer or officers who may be in charge of the collection of taxes for which the property affected may be liable at that date, that all taxes which have been levied and become chargeable against such property at such date have been duly paid, satisfied and discharged and must file therewith a certificate from the proper officer or officers, who may be in charge of the collections, that all delinquent assessments for which the property affected may be liable at that date and that all special assessments assessed against said property, which, under the plat filed, become streets, alleys and other public places, have been paid. [1927 c 188 § 1; 1893 c 129 § 1; Code 1881 § 2331; 1862 p 431 § 4; 1857 p 26 § 4; RRS § 9290.]

Acknowledgments out of state: RCW 64.08.020.

Foreign acknowledgments, who may take: RCW 64.08.040.

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

Who may take acknowledgments: RCW 64.08.010.

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

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

Platted streets as public highways: RCW 58.08.050.

Regulation of surveys and plats: RCW 58.10.040.

58.08.040 Deposit to cover anticipated taxes. Any person filing a plat subsequent to May 31st in any year and prior to the date of the collection of taxes, shall deposit with the county treasurer a sum equal to the product of the county assessor's latest valuation on the unimproved property in such subdivision multiplied by the current year's dollar rate increased by twenty-five percent on the property platted. The treasurer's receipt for said amount shall be taken by the auditor as evidence of the payment of the tax. The treasurer shall appropriate so much of said deposit as will pay the taxes on the said property when the tax rolls are placed in his hands for collection, and in case the sum deposited is in excess of the amount necessary for the payment of the said taxes, the treasurer shall return, to the party depositing, the amount of said excess, taking his receipt therefor, which receipt shall be accepted for its face value on the treasurer's quarterly settlement with the

county auditor. [1973 1st ex.s. c 195 § 74; 1969 ex.s. c 271 § 34; 1963 c 66 § 1; 1909 c 200 § 1; 1907 c 44 § 1; 1893 c 129 § 2; RRS § 9291.]

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

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

Assessment date: RCW 84.40.020.

Property taxes—Collection of taxes: Chapter 84.56 RCW.

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

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

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

Streets over tidelands declared public highways: RCW 35.21.230.

Chapter 58.09

SURVEYS—RECORDING

Sections

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58.09.030	Compliance with chapter required.
58.09.040	Records of survey—Contents—Filing—Replacing corner, filing record.
58.09.050	Records of survey—Processing.
58.09.060	Records of survey, contents—Record of corner, information.
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58.09.090	When record of survey not required.
58.09.100	Filing fee.
58.09.110	Duties of county auditor.
58.09.120	Monuments—Requirements.
58.09.130	Monuments disturbed by construction activities—Procedure—Requirements.
58.09.140	Noncompliance grounds for revocation of land surveyor's license.
58.09.900	Severability—1973 c 50.

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

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

58.09.020 Definitions. As used in this chapter:

(1) "Land surveyor" shall mean every person authorized to practice the profession of land surveying under

the provisions of chapter 18.43 RCW, as now or hereafter amended.

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

(3) "Survey" shall mean the locating and monumenting in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners. [1973 c 50 § 2.]

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

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

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

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

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

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

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

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

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

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

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

(1) Surveys which qualify under RCW 58.09.040(1) shall be a map, legibly drawn, printed or reproduced by a process guaranteeing a permanent record in black on tracing cloth, or equivalent, eighteen by twenty-four inches, or of a size as required by the county auditor. If ink is used on polyester base film, the ink shall be coated with a suitable substance to assure permanent legibility. A two inch margin shall be provided on the left edge and a one-half inch margin shall be provided at the other edges of the map.

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

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

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

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

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

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

(d) Certificates required by RCW 58.09.080;

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

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

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

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

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

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

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

58.09.070 Coordinates—Map showing control scheme required. When coordinates in the Washington coordinate system are shown for points on a record of survey map, the map may not be recorded unless it also shows, or is accompanied by a map showing, the control

scheme through which the coordinates were determined from points of known coordinates. [1973 c 50 § 7.]

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

SURVEYOR'S CERTIFICATE

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

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

AUDITOR'S CERTIFICATE

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

(Signed) _____
County Auditor

[1973 c 50 § 8.]

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

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

(b) When it is of a preliminary nature;

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

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

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

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

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

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

The original survey map shall be stored for safekeeping in a reproducible condition. It shall be proper for the

auditor to maintain for public reference a set of counter maps that are prints of the original maps. The original maps shall be produced for comparison upon demand. [1973 c 50 § 11.]

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

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

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

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

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

58.09.900 Severability—1973 c 50. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or

the application of the provision to other persons or circumstances is not affected. [1973 c 50 § 15.]

Chapter 58.10

DEFECTIVE PLATS LEGALIZED

Sections

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

58.10.010 Defective plats legalized—1881 Code.

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

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

Rules of court: ER 803(a)(14).

Certified copies of instruments, or transcripts of county commissioners' proceedings: RCW 5.44.070.

Certified copies of recorded instruments as evidence: RCW 5.44.060.

Instruments to be recorded or filed: RCW 65.04.030.

Photographic copies of business and public records as evidence: RCW 5.46.010.

Photostatic or photographic copies of public or business records admissible in evidence: RCW 40.20.030.

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

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

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

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

Chapter 58.11

PLATS—VACATION—CODE 1881

Sections

58.11.010	Vacations in unincorporated towns—Petition—Notice.
58.11.020	Hearing and order.
58.11.030	Title to vacated property.
58.11.040	Vacations in incorporated towns—Petition—Proceedings.
58.11.050	Vacation of platted lots outside municipalities.

Cities and towns—Streets—Vacation: Chapter 35.79 RCW.

58.11.010 Vacations in unincorporated towns—Petition—Notice. Any person interested in any town not incorporated, who may desire to vacate any lot, street, alley, common, or any part thereof, or any public square, or part thereof, in any such town, may petition the board of county commissioners for the proper county. The petition shall set forth the facts pertinent thereto, with a description of the property to be vacated, and shall be filed in the office of the county auditor. The auditor shall give notice of the time and place of hearing on the petition before the commissioners, by posting notice thereof, containing a description of the property to be vacated, in three of the most public places in said town, at least twenty days before the hearing. [1953 c 114 § 1. Prior: Code 1881 § 2333; 1869 p 409 § 1; 1862 p 432 § 1; 1857 p 27 § 1; RRS § 9301. Formerly RCW 58.12.090.]

Vacation of county roads: Chapter 36.87 RCW.

58.11.020 Hearing and order. Said court [board of county commissioners], if satisfied that the aforesaid notice has been given, may, in their discretion, vacate the same, with such conditions and restrictions as they may deem reasonable, and for the public good. [Code 1881 § 2334; 1869 p 410 § 2; 1862 p 432 § 2; 1857 p 27 § 2; RRS § 9302. Formerly RCW 58.12.100.]

58.11.030 Title to vacated property. The part so vacated, if it be a lot or lots, shall vest in the rightful owner, who may have the title thereof according to law; and if the same be a street or alley, the same shall be attached to the lots or ground bordering on such street or alley; and all right or title thereto shall vest in the person or persons owning the property on each side thereof, in equal proportions: *Provided*, The lots or grounds so bordering on such street or alley, have been sold by the original owner or owners of the soil; if, however, said original owner or owners possess such title to the lots or ground bordering said street or alley on one side only, the title to the same shall vest in the said owner or owners if the said court [board of county commissioners] shall judge the same to be just and proper. [Code 1881 § 2335; 1869 p 410 § 3; 1862 p 433 § 3; 1857 p 27 § 3; RRS § 9303. Formerly RCW 58.12.110.]

58.11.040 Vacations in incorporated towns—Petition—Proceedings. In cases where any person interested in any incorporated town in this state may desire to vacate any street, alley, lot or common, or any part thereof, it shall be lawful for such person to petition the trustees in like manner as persons interested in towns not incorporated are authorized to petition the board of county commissioners; and the same proceedings shall be had thereon before such trustees, or other body corporate having jurisdiction, as are authorized to be had before the board of county commissioners; and such trustees or other corporate body may determine on such application under the same restrictions and limitations as are contained in the foregoing provisions. [Code 1881 § 2336; RRS § 9304.]

Cities and towns—Streets—Vacation: Chapter 35.79 RCW. See Rowe v. James, 71 Wash. 267, 128 Pac. 539.

58.11.050 Vacation of platted lots outside municipalities. In all cases where any person or persons have laid out, or shall hereafter lay out a town, or any addition to any town, and such town or addition does not improve, and such person or persons shall be the legal owner or owners of all the lots contained in such town or addition, such person or persons, or any other party or parties, who shall become the legal owner or owners thereof, may have such town or addition or any part thereof, vacated in like manner as is hereinbefore provided for the vacation of lots, streets and alleys. [Code 1881 § 2337; 1869 p 411 § 5; 1862 p 433 § 5; 1857 p 28 § 5; RRS § 9305. Formerly RCW 58.12.120.]

Chapter 58.12

PLATS—ALTERATION—VACATION—1903 ACT

Sections

58.12.010	Petition to change plat—Plat of proposed change.
58.12.020	Time and place of hearing—Notice.
58.12.030	Notice—Service.
58.12.040	Hearing—Determination and order.
58.12.050	Assessment district—Damages and benefits.
58.12.060	New plat to be filed—Order of vacation.
58.12.065	Appeals to superior court.
58.12.070	Appeals to superior court—Manner and form.
58.12.080	Construction of chapter.

Cities and towns—Streets—Vacation: Chapter 35.79 RCW.

Counties—Roads, bridges—Vacation: Chapter 36.87 RCW.

Oyster lands—Vacation of reserve—Sale or lease of lands: RCW 75.24.030 and 79.20.110.

Plats: See notes following Title 58 RCW digest.

Public lands—Sales, leases—Vacation of plat by commissioner: RCW 79.01.104.

Public lands—Sales, leases—Vacation on petition—Preference right to purchase: RCW 79.01.108.

Tidelands, shorelands, harbors—Effect of replat: RCW 79.01.476.

Tidelands, shorelands, harbors—Vacation by replat—Preference right of tideland owner: RCW 79.01.464.

Tidelands, shorelands, harbors—Vacation of waterways—Extension of streets: RCW 79.01.472.

58.12.010 Petition to change plat—Plat of proposed change. That whenever three-fourths in number and area of the owners of any townsite, city plat or plats, addition or additions, or part thereof, shall be desirous of altering the plat or plats, replatting or vacating the same or any part thereof, they may prepare a plat or plats, showing such alterations or replat, drafted upon a copy of the existing plat or plats, or that portion desired to be altered, replatted or vacated, and file the same with the clerk of the board of county commissioners, or city council or other governing body having jurisdiction of the establishment or vacation and control of the streets to be affected, accompanied with a petition for the change desired: *Provided*, That this section shall not be construed as applying to the alteration, replatting or vacation of any plat of state granted, tide, or shore lands. [1927 c 139 § 1; 1903 c 92 § 1; RRS § 9311.]

58.12.020 Time and place of hearing—Notice. Thereupon and upon the payment of the cost thereof the said clerk shall fix a time for the hearing of said petition, which time shall not be less than thirty nor more than sixty days after the filing of said petition, and shall cause a notice to be issued under his hand and the seal of said county or city, stating by whom and when said petition was filed, the object thereof and when and where the same will be heard. Said notice shall also describe the property sought to be altered, replatted or vacated. [1903 c 92 § 2; RRS § 9312.]

58.12.030 Notice—Service. Said clerk shall cause said notice to be served, as in the manner provided for service of summons in civil actions, upon all the owners of property not joining in said petition, as shown by the records in the auditor's office of the county wherein the

townsite, plat or plats, addition or additions may be located. [1903 c 92 § 3; RRS § 9313.]

Civil procedure—Summons, how served: RCW 4.28.080.

58.12.040 Hearing—Determination and order. Thereafter such board of county commissioners, or city council shall have full and complete jurisdiction to inquire into and determine the merits of the changes or relief prayed for, assess damages or benefits, award the same and make such order in the premises as justice and the public welfare may require. [1903 c 92 § 4; RRS § 9314.]

58.12.050 Assessment district—Damages and benefits. The whole of the land embraced in the plat or plats proposed to be altered, replatted or vacated shall be and constitute an assessment district, and damages shall be assessed and benefits awarded as now provided by law for the establishment, alteration or vacation of streets, alleys and roads by said board of county commissioners and city council. [1903 c 92 § 5; RRS § 9315.]

58.12.060 New plat to be filed—Order of vacation. Any plat or replat so adjudicated, adjusted and approved, showing the lines of the original and adjudicated plat, shall be filed and recorded with the auditor of the county where the property is situated, and shall thereafter be the lawful plat and substitute for all former plats: *Provided, however,* That should the said townsite, city plat or plats, addition or additions, or parts thereof, be vacated and not otherwise altered or replatted, it shall only be necessary to file with the county auditor the order, resolution or ordinance vacating the same, and the auditor shall thereupon note upon the original plat the part thereof so vacated. [1909 c 136 § 1; 1903 c 92 § 6; RRS § 9316.]

58.12.065 Appeals to superior court. Any owners of any portion of the property affected by the actual award or final judgment of such board of county commissioners or city council may appeal to the superior court having jurisdiction of appeals from justice of the peace in the locus in quo. [1903 c 92 § 7; RRS § 9317, part. Formerly RCW 58.12.070, part.]

58.12.070 Appeals to superior court—Manner and form. Such appeals shall be taken in the same manner and form as appeals from justices of the peace. [1903 c 92 § 8; RRS § 9317, part. FORMER PART OF SECTION: 1903 c 92 § 7; RRS § 9317, part, now codified as RCW 58.12.065.]

Appeals, justice courts: Chapter 12.36 RCW.

58.12.080 Construction of chapter. Nothing in this chapter contained shall in any way change, limit or affect the power now vested in a board of county commissioners or city council to vacate streets and alleys and parts of streets and alleys. [1903 c 92 § 9; RRS § 9318.]

Vacation of city streets or alleys: Chapter 35.79 RCW.

Chapter 58.17

PLATS—SUBDIVISIONS—DEDICATIONS

Sections	Purpose.
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58.17.020	Subdivisions to comply with chapter, local regulations.
58.17.030	Provisions inapplicable, when.
58.17.040	Assessors plat—Compliance.
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58.17.060	Short plats and short subdivisions—Filing.
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58.17.070	Filing of preliminary plat.
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58.17.090	Review of proposed subdivisions by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval.
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58.17.160	Certificate giving description and statement of owners must accompany final plat—Dedication, certificate requirements if plat contains—Waiver.
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58.17.180	Approval of plat required before filing—Procedure when unapproved plat filed.
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58.17.230	Permanent control monuments.
58.17.240	Survey of subdivision and preparation of plat.
58.17.250	Joint committee—Members—Recommendations for surveys, monumentation and plat drawings.
58.17.260	Submission of local subdivision regulations to planning and community affairs agency.
58.17.270	Naming and numbering of subdivisions, streets, lots and blocks.
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58.17.310	Compliance with chapter and local regulations—Enforcement.
58.17.320	Hearing examiner system—Adoption authorized—Procedures—Decisions.
58.17.330	Validation of existing ordinances and resolutions.
58.17.900	Severability—1969 ex.s. c 271.
58.17.910	Effective date and application of 1974 ex.s. c 134.
58.17.920	

58.17.010 Purpose. The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and

highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description. [1969 ex.s. c 271 § 1.]

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

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

(1) "Subdivision" is the division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and shall include all resubdivision of land.

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

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

(4) "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and restrictive covenants to be applicable to the subdivision, and other elements of a plat or subdivision which shall furnish a basis for the approval or disapproval of the general layout of a subdivision.

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

(6) "Short subdivision" is the division of land into four or less lots, tracts, parcels, sites or subdivisions for the purpose of sale or lease.

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

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

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

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

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

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

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

(14) "County commissioner" shall be as defined in chapter 36.32 RCW or the body assigned such duties under a county charter. [1969 ex.s. c 271 § 2.]

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

58.17.040 Provisions inapplicable, when. The provisions of this chapter shall not apply to:

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

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

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

(5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land and a local government has approved a binding site plan for the use of the land in accordance with local regulations. The term "site plan" means a drawing to a scale specified by local ordinance and which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; and (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan. A site plan approved by a local government body shall not be "binding" under this subsection unless development in conformity to the site plan is enforceable under a local ordinance. [1974 ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

Reviser's note: Subsection (4) of this section was vetoed.

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

58.17.060 Short plats and short subdivisions—Summary approval—Regulations—Requirements. The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions, or revision thereof. Such regulations shall be adopted by ordinance and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat for record in the office of the county auditor: *Provided*, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat: *Provided further*, That such regulations are not required to contain a penalty clause as provided in RCW 36.32-.120 and may provide for wholly injunctive relief. [1974 ex.s. c 134 § 3; 1969 ex.s. c 271 § 6.]

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

58.17.070 Preliminary plat of subdivisions and dedications—Submission for approval. A preliminary plat of proposed subdivisions and dedications of land shall be submitted for approval to the legislative body of the city, town, or county within which the plat is situated. [1969 ex.s. c 271 § 7.]

58.17.080 Filing of preliminary plat. Notice of the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities. Any notice required by this chapter shall include the hour and location of the hearing and a description of the property to be platted. Notice of the filing of a preliminary plat of a proposed subdivision located in a city or town and adjoining the municipal boundaries thereof shall be given to appropriate county officials. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway shall be given to the state department of highways. [1969 ex.s. c 271 § 8.]

58.17.090 Notice of public hearing. Upon receipt of an application for preliminary plat approval the administrative officer charged by ordinance with responsibility for administration of regulations pertaining to platting and subdivisions shall set a date for a public hearing. Notice of such hearing shall be given by publication of at least one notice not less than ten days prior to the

hearing in a newspaper of general circulation within the county. Additional notice of such hearing shall be given by at least one other method which may include mailing to adjacent landowners, posting on the property, or in any manner local authorities deem necessary to notify adjacent landowners and the public. All hearings shall be public. All hearing notices shall include a legal description of the location of the proposed subdivision and either a vicinity location sketch or a location description in nonlegal language. [1974 ex.s. c 134 § 4; 1969 ex.s. c 271 § 9.]

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

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

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

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

58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Finding—Release from damages. The city, town, or county legislative body shall inquire into the public use and interest

proposed to be served by the establishment of the subdivision and dedication. It shall determine if appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and schoolgrounds, and shall consider all other relevant facts and determine whether the public interest will be served by the subdivision and dedication. If it finds that the proposed plat makes appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and schoolgrounds and that the public use and interest will be served by the platting of such subdivision, then it shall be approved. If it finds that the proposed plat does not make such appropriate provisions or that the public use and interest will not be served, then the legislative body may disapprove the proposed plat. Dedication of land to any public body, may be required as a condition of subdivision approval and shall be clearly shown on the final plat. The legislative body shall not as a condition to the approval of any plat require a release from damages to be procured from other property owners. [1974 ex.s. c 134 § 5; 1969 ex.s. c 271 § 11.]

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

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

58.17.130 Bond in lieu of actual construction of improvements prior to approval of final plat—Bond or security to assure successful operation of improvements. Local regulations shall provide that in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the city, town, or county legislative body may accept a bond, in an amount and with surety and conditions satisfactory to it, or other secure method, providing for and securing to the municipality the actual construction and installation of such improvements within a period specified by the city, town, or county legislative body and expressed in the bonds. In addition, local regulations may provide for methods of security, including the posting of a bond securing to the municipality the successful operation of improvements for an appropriate period of time up to two years after final approval. The municipality is hereby granted the power to enforce bonds authorized under this section by all appropriate legal and equitable

remedies. Such local regulations may provide that the improvements such as structures, sewers, and water systems shall be designed and certified by or under the supervision of a registered civil engineer prior to the acceptance of such improvements. [1974 ex.s. c 134 § 7; 1969 ex.s. c 271 § 13.]

58.17.140 Time limitation for approval or disapproval of plats—Extensions. Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period: *Provided*, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. Ordinances may provide for the expiration of approval given to any preliminary plats. [1974 ex.s. c 134 § 8; 1969 ex.s. c 271 § 14.]

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

- (1) Local health department as to the adequacy of the proposed means of sewage disposal and water supply;
- (2) Local planning agency or commission, charged with the responsibility of reviewing plats and subdivisions, as to compliance with all terms of the preliminary approval of the proposed plat subdivision or dedication;
- (3) City, town or county engineer. [1969 ex.s. c 271 § 15.]

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

- (1) Contain a statement of approval from the city, town or county licensed road engineer or by a licensed engineer acting on behalf of the city, town or county as to the survey data, the layout of streets, alleys and other rights of way, design of bridges, sewage and water systems, and other structures;
- (2) Be accompanied by a complete survey of the section or sections in which the plat or replat is located, or as much thereof as may be necessary to properly orient the plat within such section or sections. The plat and section survey shall be submitted with complete field and computation notes showing the original or reestablished corners with descriptions of the same and the actual traverse showing error of closure and method of balancing. A sketch showing all distances, angles and calculations required to determine corners and distances of the plat shall accompany this data. The allowable error of closure shall not exceed one foot in five thousand feet.

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

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

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

58.17.165 Certificate giving description and statement of owners must accompany final plat—Dedication, certificate requirements if plat contains—Waiver. Every final plat or short plat of a subdivision or short subdivision filed for record must contain a certificate giving a full and correct description of the lands divided as they appear on the plat or short plat, including a statement that the subdivision or short subdivision has been made with the free consent and in accordance with the desires of the owner or owners. If the plat or short plat includes a dedication, the certificate shall also contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat or short plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate shall be signed and acknowledged before a notary public by all parties having any interest in the lands subdivided.

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

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

58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies. When the legislative body of the city, town or county finds that the public use and interest will be served by the proposed subdivision, and that said subdivision meets the requirements of this chapter and any local regulations adopted

pursuant thereto, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. [1969 ex.s. c 271 § 17.]

58.17.180 Review of decision. Any decision approving or disapproving any plat shall be reviewable for unlawful, arbitrary, capricious or corrupt action or nonaction by writ of review before the superior court of the county in which such matter is pending. The action may be brought by any property owner in the city, town or county having jurisdiction, who deems himself aggrieved thereby: *Provided*, That application for a writ of review shall be made to the court within thirty days from any decision so to be reviewed. The cost of transcription of all records ordered certified by the court for such review shall be borne by the appellant. [1969 ex.s. c 271 § 18.]

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

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

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

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

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

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

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

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

58.17.260 Joint committee—Members—Recommendations for surveys, monumentation and plat drawings. In order that there be a degree of uniformity of survey monumentation throughout the cities, towns and counties of the state of Washington, there is hereby created a joint committee composed of six members to

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

58.17.270 Submission of local subdivision regulations to planning and community affairs agency. In order that there may be current and readily available information available for the public concerning subdivision regulations, all city, town and county legislative bodies shall submit proposed ordinances and amendments to the state planning and community affairs agency thirty days prior to final adoption for agency review and comparison. [1969 ex.s. c 271 § 28.]

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

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

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

58.17.310 Approval of plat within irrigation district without provision for irrigation water right of way prohibited. In addition to any other requirements imposed by the provisions of this chapter, the legislative authority of any city, town, or county shall not approve a short plat or final plat, as defined in RCW 58.17.020, for any subdivision, short subdivision, lot, tract, parcel, or site which lies in whole or in part in an irrigation district organized pursuant to chapter 87.03 RCW unless there has been provided an irrigation water right of way for

each parcel of land in such district and such rights of way shall be evidenced by the respective plats submitted for final approval to the appropriate legislative authority. Compliance with the requirements of this section together with all other applicable provisions of this chapter shall be a prerequisite, within the expressed purpose of this chapter, to any sale, lease, or development of land in this state. [1973 c 150 § 2.]

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

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

(1) The decision may be given the effect of a recommendation to the legislative body;

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

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

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

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

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

58.17.910 Severability—1969 ex.s. c 271. If any provision of this chapter, or its application to any person

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

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

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

***Reviser's note:** "this 1974 amendatory act" [1974 ex.s. c 134] consists of amendments to RCW 58.17.030, 58.17.040, 58.17.060, 58.17.090, 58.17.110–58.17.140, 58.17.210, 58.17.240, and the enactment of RCW 58.17.065, 58.17.320, and 58.17.920.

Chapter 58.18 ASSESSOR'S PLATS

Sections

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

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

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

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

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

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

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

***Reviser's note:** "the effective date of this act" was midnight June 7, 1961; see preface 1961 session laws.

Chapter 58.19
LAND DEVELOPMENT ACT

Sections	
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58.19.950	Severability—1973 1st ex.s. c 12.

58.19.010 Purpose. The legislature finds and declares that the sale and offering for sale of land or of interests in associations which provide for the use or occupancy of land touches and affects a great number of the citizens of this state and that full and complete disclosure to prospective purchasers of pertinent information concerning land developments, including any encumbrances or liens which might attach to the land and the physical characteristics of the development as well as the surrounding land, is essential. The legislature further finds and declares that a program of state registration and of publication and delivery to prospective purchasers of a complete and accurate public offering statement is necessary in order to adequately protect both the economic and physical welfare of the citizens of

this state. It is the purpose of this chapter to provide for a reasonable program of state registration and regulation of the sale and offering for sale of any interest in significant land developments within or without the state of Washington, so that the prospective purchasers of such interests might be provided with full, complete, and accurate information of all pertinent circumstances affecting their purchase. [1973 1st ex.s.:c 12 § 1.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Pursuant to court order; or

(h) As cemetery lots or interests.

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

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

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

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

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

(e) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the business and professions administration in the department of licensing. [1979 c 158 § 209; 1973 1st ex.s. c 12 § 3.]

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

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

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

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

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

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

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

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

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

(5) A statement of the existing provisions for access, sewage disposal, potable water, and other public utilities in the development; a statement of the improvements to be installed, how they are going to be financed, the schedule for their completion; and a statement as to the provision for improvement maintenance. The statements required in this subsection shall include certificates from the appropriate governmental authorities certifying that the applicant has complied with all local health and planning and state and local subdivision requirements;

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

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

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

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

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

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

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

(13) The proposed public offering statement;

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

58.19.070 Public offering statement—Contents.

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

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

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

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

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

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

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

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

58.19.080 Requirements enumerated—Examination. Upon receipt of an application for registration in

proper form, the director shall immediately initiate an examination to determine that the following requirements are satisfied:

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

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

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

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

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

58.19.090 Registration or rejection—Order—

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

(2) If the director affirmatively determines, upon inquiry and examination that the requirements of RCW 58.19.080 have been met, he shall enter an order registering the development and shall designate the form of the public offering statement.

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

58.19.100 Registration under federal act. (1) Any development registered under the Interstate Land Sales Full Disclosure Act (82 Stat. 590–599; 15 U.S.C. Sec.

1701–1720) shall, at the developer's request, be registered under this chapter if the developer:

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

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

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

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

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

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

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

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

58.19.120 Report of changes required—Amendments. The developer shall immediately report to the director any material changes in the information contained in his application for registration. No change in the substance of the promotional plan or plan of disposition or completion of the development may be made after registration without notifying the director and without making appropriate amendment of the public offering statement. A public offering statement is not current unless it incorporates all amendments. [1973 1st ex.s. c 12 § 12.]

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

58.19.140 Public offering statement—Promotional use, distribution restriction—Holding out that state or employees, etc., approve development prohibited. The

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

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

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

58.19.160 Public offering statement—Copies available to public. A copy of the public offering statement issued on land within a development covered by this chapter shall be given by the director, upon oral or written request, to any member of the public. [1973 1st ex.s. c 12 § 16.]

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

58.19.180 Unlawful to sell lots or parcels subject to blanket encumbrance which does not provide purchaser can obtain clear title—Alternatives. It shall be unlawful for the developer to make a sale of lots or parcels within a development which is subject to a blanket encumbrance which does not contain, within its terms or by supplementary agreement, a provision which shall unconditionally provide that the purchaser of a lot or parcel encumbered thereby can obtain the legal title, or

other interest contracted for, free and clear of the lien of such blanket encumbrance upon compliance with the terms and conditions of the purchase, unless the developer shall elect and comply with one of the following alternative conditions:

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

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

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

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

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

(3) A bond to the state of Washington or such other proof of financial responsibility is furnished to the director for the benefit and protection of purchasers of such lots or parcels in such an amount and subject to such terms, as may be approved by the director, which shall provide for the return of moneys paid or advanced by any purchaser on account of a sale of any such lot or parcel if a proper release from such blanket encumbrance is not obtained: *Provided*, That if it should be determined that such purchaser, by reason of default, or otherwise, is not entitled to the return of such moneys or any portion thereof, such bond or other proof of financial responsibility shall be exonerated to the extent and in the amount thereof. The amount of the bond or other proof of financial responsibility may be increased or decreased or a bond may be waived from time to time as the director shall determine. [1973 1st ex.s. c 12 § 18.]

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

(1) A governmental agency;

(2) A person who is not affiliated with the developer, in trust, and on terms acceptable to the director; or

(3) An association comprised solely of persons who have purchased lots in the development, or their assignees.

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

58.19.190 False advertising—Finding—Notice—Order—Hearing. No person shall publish in this state any advertisement concerning a development subject to the registration requirements of this chapter after the director finds that the advertisement contains any statements that are false, misleading, or deceptive and so notifies the person in writing. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section the person desiring to use the advertisement may in writing request the order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fourteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, the director shall determine whether to affirm and to continue or to rescind such order and shall have all powers granted under such act. [1973 1st ex.s. c 12 § 19.]

58.19.200 Investigations of violations—Procedure. (1) The director may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the director determines, as to all facts and circumstances concerning the matter to be investigated.

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

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

(4) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 12 § 20.]

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

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

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

(3) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order hereunder, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation, or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The director shall not be required to post a bond in any court proceedings. [1973 1st ex.s. c 12 § 21.]

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

- (a) Failed to comply with the terms of a cease and desist order;
- (b) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretense, misrepresentation, false advertising, or dishonest dealing in real estate transactions;
- (c) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of development purchasers;
- (d) Repeatedly failed to perform any stipulation or agreement made with the director as an inducement to grant any registration, to reinstate any registration, or to

approve any promotional plan or public offering statement;

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

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

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

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

58.19.240 Judicial review. Proceedings for judicial review shall be in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 12 § 24.]

58.19.250 Rules and regulations. The director shall prescribe reasonable rules and regulations in order to implement this chapter and such rules and regulations shall be adopted, amended, or repealed in compliance with the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 12 § 25.]

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

- (1) Intervene in a suit involving a development registered under this chapter;
- (2) Accept information contained in registrations filed in other states;
- (3) Contract with similar agencies in this state, any other state, or with the federal government to perform investigative functions;
- (4) Accept grants in aid from any source;
- (5) Cooperate with similar agencies in other states and with the federal government to establish, insofar as practical, uniform filing procedures and forms, uniform public offering statements, advertising standards and rules, and common administrative practices. [1973 1st ex.s. c 12 § 26.]

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

(2) The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule or regulation adopted hereunder to the attorney general or the prosecuting attorney of the county

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

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

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

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

(1) Except as provided in subsection (3) of this section, the fee which shall accompany each application for registration shall be computed according to the number of units (meaning lots, parcels, or interests) in the development as provided in the following schedule:

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

1,251-1,300	1,250
1,301-1,350	1,275
1,351-1,400	1,300
1,401-1,450	1,325
1,451-1,500	1,350
1,501-1,550	1,375
1,551-1,600	1,400
1,601-1,650	1,425
1,651-1,700	1,450
1,701-1,750	1,475
1,751-or more	1,500

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

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

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

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

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

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

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

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

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

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

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

Chapter 58.20

WASHINGTON COORDINATE SYSTEM

Sections

58.20.010	United States plane coordinate adopted—Zones.
58.20.020	Designation of system by zones.
58.20.030	X and Y coordinates.
58.20.040	Tract in both zones, how described.
58.20.050	Zones defined.
58.20.060	Recording coordinates—Conditions.
58.20.070	Use of term limited.
58.20.080	United States survey to prevail.
58.20.090	Construction of chapter.
58.20.900	Severability—1945 c 168.

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

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

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

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

58.20.020 Designation of system by zones. As established for use in the north zone, the Washington coordinate system shall be named, and in any land description

in which it is used it shall be designated, the "Washington coordinate system, north zone".

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

58.20.030 X and Y coordinates. The plane coordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in feet and decimals of a foot. One of these distances, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to the coordinates, on the Washington coordinate system, of the triangulation and traverse stations of the United States coast and geodetic survey within the state of Washington, as those coordinates have been determined by the said survey. [1945 c 168 § 3; Rem. Supp. 1945 § 10726c.]

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

58.20.050 Zones defined. For purposes of more precisely defining the Washington coordinate system, the following definition by the United States coast and geodetic survey is adopted:

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

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

The position of the Washington coordinate system shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States coast and geodetic survey for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927, and whose coordinates have been computed on the system herein defined.

Any such station may be used to establish a survey connection with the Washington coordinate system. [1945 c 168 § 5; Rem. Supp. 1945 § 10726e.]

58.20.060 Recording coordinates—Conditions. No coordinates based on the Washington coordinate system, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless such point is within one-half mile of a triangulation or traverse station established in conformity with the standards prescribed in RCW 58.20.050: *Provided*, That said one-half mile limitation may be modified by a duly authorized state agency to meet local conditions. [1945 c 168 § 6; Rem. Supp. 1945 § 10726f.]

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

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

58.20.090 Construction of chapter. Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Washington coordinate system. [1945 c 168 § 9; Rem. Supp. 1945 § 10726i.]

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

Chapter 58.22

STATE BASE MAPPING SYSTEM

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

58.22.010 Legislative intent. It is the intent of the legislature to establish a coordinated system of state base maps to assist all levels of government to more effectively provide the information to meet their responsibilities for resource planning and management.

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 58.24

STATE AGENCY FOR SURVEYS AND MAPS

Sections

- 58.24.010 Declaration of necessity.
- 58.24.020 Official agency designated—Advisory board.
- 58.24.030 Official agency designated—Powers—Cooperate and advise—Purposes.
- 58.24.040 Official agency designated—Powers—Standards, maps, records, report, temporary removal of boundary marks or monuments.
- 58.24.050 Employees—Licensed engineers or surveyors.
- Cemetery property—Surveys and maps, plats, etc.: Chapter 68.24 RCW.*
- Coal mining code—Surveys and maps: Chapter 78.40 RCW.*
- Counties—Land surveys, record of surveys: RCW 36.32.370, 36.32.380.*
- Flood control districts—1937 act—Boundaries, how defined—Map: RCW 86.09.094, 86.09.097.*
- Flood control zones by state—United States maps as basis of control zones: RCW 86.16.050.*
- Geological survey: Chapter 43.27A RCW.*
- Irrigation districts—Map of district: RCW 87.03.775.*
- Maps and plats—Record and index—Public inspection: RCW 79.01.708.*
- Public inspection: RCW 79.01.708.*
- Reclamation districts—Surveys, etc.: Chapter 89.30 RCW.*
- Regulation of public ground waters—Designating or modifying boundaries of areas—Notice of hearing—Findings—Order: RCW 90.44.130.*
- Restoration of United States survey markers: RCW 47.36.010.*
- State highways and toll bridges—Maps, plans, etc.—Filing: RCW 47.28.040.*
- State highways and toll bridges—Copy of map, plans, etc.—Fee: RCW 47.28.060.*

58.24.010 Declaration of necessity. It is the responsibility of the state to provide a means for the identification and preservation of survey points for the description of common land boundaries in the interest of the people of the state. There is an immediate necessity for the adoption of a system of permanent reference as to boundary monuments. There is now no recognized agency for the establishment of survey points for the definition of land boundaries and a need for such an agency to coordinate and publish dependable surveys now in existence where the record has been obscured. [1951 c 224 § 2.]

Severability—1951 c 224: "If any provision of this act shall be declared invalid, such invalidity shall not affect any other portion of this act which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable." [1951 c 224 § 7.] This applies to this chapter and to the 1951 amendment to RCW 58.16.100.

58.24.020 Official agency designated—Advisory board. The engineering department of the department of public lands is hereby designated as the official agency for surveys and maps. The commissioner of public lands shall appoint an advisory board of five members, the majority of whom shall be registered professional engineers or land surveyors, who shall serve at the pleasure of the commissioner. Members of the board shall serve without salary but are to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while actively engaged in the discharge of their duties. [1975-'76 2nd ex.s. c 34 § 152; 1951 c 224 § 3.]

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

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

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

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

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

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

(4) For promotion of the use of the level net as established by the United States coast and geodetic survey. [1951 c 224 § 4.]

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

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

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

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

(4) Supervise the sale of maps and such publications as may come into the possession of the division of surveys and maps. Revenue derived from the sale thereof shall revert to the general fund;

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

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

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

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

*Reviser's note: "this act" (1951 c 224) is codified in this chapter 58.24 RCW and RCW 58.16.100.

Chapter 58.28

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

Sections

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INCORPORATED TOWNS ON UNITED STATES LAND

58.28.010 Councils' duties when townsites on United States land. It is the duty of the city or town council of any city or town in this state situate upon public lands of the United States or lands, the legal and equitable title to which is in the United States of America, to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes and proceedings, at a regular meeting, to authorize and direct the mayor and

clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this chapter and the intentions of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, including section sixteen of an act of congress entitled "An act to repeal timber culture laws and for other purposes," approved March 3, 1891, and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said acts of congress, and file in the proper United States land office a proper application in writing describing the tracts of land on which such city or town is situate, and make proof and payment for such tracts of land in the manner required by law. [1909 c 231 § 1; RRS § 11485. Prior: 1888 c 124 pp 216-220.]

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

58.28.030 Councils' duties when townsites on United States land—Plats—Filing. A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein the city or town is situated, one must be deposited in the proper United States land office, and one with the city or town clerk. These plats shall be considered public records, and each must be accompanied with a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file a copy of said field notes in his office. The said surveyor must number the blocks as divided by the roads, highways and streets opened and generally used, and for which a public necessity exists at the time of making such survey, and must number the

several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats. Said survey and plat thereof shall conform as near as may be to the existing rights, interests and claims of the occupants thereof, but no lot in the central or business portion of such city or town shall exceed in area four thousand, two hundred square feet, and no suburban lot in such city or town shall exceed two acres in area. [1909 c 231 § 3; RRS § 11487. Prior: 1888 c 124 pp 216-220.]

58.28.040 Councils' duties when townsites on United States land—Survey, notice of—Bids for—Franchises continued. Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage and at the least expense to the holders, claimants and occupants thereof; and the council is hereby authorized and directed to receive bids for such surveying, and to let the same by contract to the lowest competent bidder: *Provided*, That the possessors, owners and claimants of water works, electric light, telegraph, telephone, pipe or power lines, sewers and like or similar property located in such roads, streets, alleys and other public places in such cities and towns shall be maintained and protected in the same, as the same shall exist at the time of the entry in the United States land office of the land embracing such city or town, and the right to continue to use such property for the purposes for which said property was intended, is hereby acknowledged and confirmed. [1909 c 231 § 4; RRS § 11488. Prior: 1888 c 124 pp 216-220.]

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

- (1) All streets, alleys, avenues, roads and highways, and the width thereof.
- (2) All parks, squares and all other grounds reserved for public uses, with the boundaries and dimensions thereof.
- (3) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.
- (4) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.
- (5) The location of all stone or iron monuments set to establish street lines.
- (6) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.
- (7) The location of all section corners, quarter section or meander corners of sections within the limits of said plat.
- (8) In case no such section or quarter section or meander corners are within the limits of the plat, it must show a connection line to some corner or initial point of

the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot. [1909 c 231 § 5; RRS § 11489. Prior: 1888 c 124 pp 216–220.]

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

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

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

58.28.090 Assessments. Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half acre in area shall be assessed at the rate of two

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

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

58.28.110 Deficiency assessment—When payable. If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and

parcels of land in such city or town, and declare the same upon the basis set down in RCW 58.28.090, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinafter [hereinbefore] mentioned, or at the time when the deed of conveyance hereinbefore [hereinafter] provided for, is issued. [1909 c 231 § 11; RRS § 11495. Prior: 1888 c 124 pp 216–220.]

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

58.28.130 Entries on mineral lands—Rights of claimants. Townsite entries may be made by incorporated towns or cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: *Provided*, That no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface

ground shall have had possession of the same before the inception of the title of the mineral vein applicant. [1909 c 231 § 13; RRS § 11497. Prior: 1888 c 124 pp 216–220.]

58.28.140 Conflicting claims—Procedure. In all cases of adverse claims or disputes arising out of conflicting claims to lands or concerning boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed or denied in accordance with the facts; but in all other cases of adverse claims, the party out of possession shall commence his action in a court of competent jurisdiction within six months after the time of filing of the patent from the United States (or a certified copy thereof), in the office of the county auditor. In case such action be commenced, the plaintiff must serve a notice of *lis pendens* upon the mayor, who must thereupon stay all proceedings in the matter of granting any deed to the land in dispute until the final decision in such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant to establish that he, she or it was an occupant of the ground in controversy within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office, or is the successor in interest of such occupant. [1909 c 231 § 14; RRS § 11498. Prior: 1888 c 124 pp 216–220.]

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

58.28.150 Notice of filing patent—Abandonment of claim. The said council must give public notice by advertising for four weeks in a newspaper published in said city or town, or, if there be no newspaper published in said city or town, then by publication in some newspaper having general circulation in such city or town, and not less than five written or printed notices must be posted in public places within the limits of such city or townsite; such notice must state that patent for said townsite (or certified copy thereof) has been filed in the county auditor's office. If any person, company, association or any other claimant of lands in such city or town fails, neglects or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this chapter,

within three months after filing of such patent, or a certified copy thereof, in the office of the county auditor, shall be deemed to have abandoned the same and to have forfeited all right, title and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots shall be sold as unoccupied lands, and the proceeds thereof placed in the special fund in this chapter mentioned. [1909 c 231 § 15; RRS § 11499. Prior: 1888 c 124 pp 216–220.]

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

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

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

58.28.190 Corporate authorities to act promptly. Such corporate authorities shall promptly execute and perform all duties imposed upon them by the provisions of this chapter. [1909 c 231 § 19; RRS § 11503. Prior: 1888 c 124 pp 216–220.]

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

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

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

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

58.28.204 Appeals—Procedure. See RCW 58.28.490.

UNINCORPORATED TOWNS ON UNITED STATES LAND

58.28.210 Unincorporated towns on United States land—Superior court judge to file claim. It is the duty of the judge of the superior court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situate upon lands the legal and equitable title to which is in the United States of America, or situate upon public lands of the United States within the county wherein such superior court is held, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and valid regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect the intentions of this chapter, and the intention of the act of congress of the

United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, and to file in the proper United States land office a proper application in writing, describing the tracts of land on which such unincorporated town is situated, and all lands entitled to be embraced in such government townsite entry, and make proof and payment for such tracts of land in the manner required by law. [1909 c 231 § 21; RRS § 11505. Prior: 1888 c 124 pp 216-220.]

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

58.28.230 Survey and plat—Boundaries—Monuments. Such judge must thereupon cause a survey to be made by some competent person, of the lands which the inhabitants of said town may be entitled to claim under said acts of congress, located according to the legal subdivisions of the sections according to the government survey thereof, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated, in any manner to public use, and by measurement the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor, occupant or claimant; and in case of any disputed claim

as to lots, lands, premises or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely; said surveyor shall survey, lay out and plat all of said lands, whether occupied or not, into lots, blocks, streets and alleys. [1909 c 231 § 23; RRS § 11507. Prior: 1888 c 124 pp 216-220.]

58.28.240 Plats—Filing. The plat thereof must be made in triplicate on a scale of not less than eighty feet to an inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein such unincorporated town is situated, one must be deposited in the proper United States land office, and one with such judge. These plats shall constitute public records, and must each be accompanied by a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file such copy of said field notes in his office. The said surveyor must number and survey the blocks as divided by the roads, and streets opened and generally used and for which a public necessity exists, at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said unincorporated town as herein provided, which said numbers must be a sufficient description of any parcel of land represented on said plats. Said survey and plat thereof shall conform as nearly as may be to the existing rights, interest, and claims of the occupants thereof, but no lot in the center or business portion of said unincorporated town shall exceed in area four thousand two hundred feet, and no suburban lot in such unincorporated town shall exceed two acres in area. [1909 c 231 § 24; RRS § 11508. Prior: 1888 c 124 pp 216-220.]

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

for which said property was intended, is hereby acknowledged and confirmed. [1909 c 231 § 25; RRS § 11509. Prior: 1888 c 124 pp 216–220.]

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

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

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

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

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

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

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

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

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

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

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

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

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

58.28.310 Notice of possession filed—Assessment and fee—Certificate—Judge's record. Every person, company, corporation, or association, claimant of any town lot or parcel of land, within the limits of such townsite, must present to such judge within three months after the patent (or a certified copy thereof), from the United States has been filed in the office of the county

auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person, or by duly authorized agent or attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons or claimants, to the best of his knowledge and belief, and in which must be stated who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said townsite as will fully exhibit the particular lots or parcels of land so claimed; and every such claimant, at the time of presenting and filing such affidavit with said judge, must pay to such judge such sum of money as said judge shall certify to be due for the assessment mentioned in RCW 58.28.300, together with the further sum of four dollars, to be appropriated to the payment of cost and expenses incurred in carrying out the provisions of this chapter, and the said judge must thereupon give to such claimant a certificate, signed by him and attested by the seal of the superior court, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. Such judge must procure a bound book for each unincorporated government townsite in his county wherein he must make proper entries of the substantial matters contained in such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of the lot or lands claimed. [1909 c 231 § 31; RRS § 11515. Prior: 1888 c 124 pp 216–220.]

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

58.28.330 Deed to claimants—Actions contesting title, limitations on. At the expiration of six months after the time of filing such patent, or certified copy thereof, in the office of the county auditor, if there has been no adverse claim filed in the meantime, said judge must execute and deliver to such claimant or to his, her, its or their heirs, executor, administrator, grantee, successor or assigns a good and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by such judge as trustee, and attested by the seal of the superior court. No conveyance of any such lands made as in this chapter provided, concludes the rights of third persons; but

such third persons may have their action in the premises, to determine their alleged interest in such lands, and their right to the legal title thereto, against such grantee, his, her, its or their heirs, executors, administrators, successors or assigns, to which they may deem themselves entitled, either in law or in equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their heirs, executors, administrators, successors or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situated; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the taking effect of this chapter. [1909 c 231 § 33; RRS § 11517. Prior: 1888 c 124 pp 216–220.]

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

58.28.350 Conflicting claims—Procedure. In all cases of adverse claims or disputes arising out of conflicting claims to land or concerning boundary lines, the adverse claimants may submit the decision thereof to said judge by an agreement in writing specifying particularly the subject matter in dispute and may agree that his decision shall be final. The said judge must hear the proofs, and shall execute a deed or deny the execution of a deed in accordance with the facts; but in all other cases of adverse claims the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the patent (or a certified copy thereof) from the United States, in the office of the county auditor. In case such action be commenced within the time herein limited, the plaintiff must serve notice of *lis pendens* upon such judge, who must thereupon stay all proceedings in the matter of granting or executing any deed to the land in dispute until the final decision in such suit; upon presentation of a certified copy of the final judgment in such action, such judge

must execute and deliver a deed of the premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. [1909 c 231 § 35; RRS § 11519. Prior: 1888 c 124 pp 216–220.]

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

Conflicting claims—Procedure: RCW 58.28.140.

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

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

58.28.390 Sale of unoccupied lots—Notice—Minimum price. All lots in such townsite which were unoccupied within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office shall be sold by such judge or under his direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of

such sale, or sales, shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted at least thirty days prior to the date of any such sale, and by publishing a like notice for four consecutive weeks prior to any such sale in a newspaper published in such town, or if no newspaper be published in such town, then in some newspaper having general circulation in such town. And deed shall be given therefor to the several purchasers: *Provided*, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided for in RCW 58.28.300, and all moneys arising from such sale or sales after deducting the cost and expenses of such sale or sales shall be placed in the fund hereinbefore mentioned. [1909 c 231 § 39; RRS § 11523. Prior: 1888 c 124 pp 216–220.]

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

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

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

58.28.430 Proof requisite to delivery of deed. No deed to any lot in such unincorporated town or unincorporated government townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath, showing such claimant

to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, executors, administrators, successors in interest or assigns of such occupant of any lot, as such, may receive such deed. [1909 c 231 § 43; RRS § 11527. Prior: 1888 c 124 pp 216–220.]

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

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

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

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

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

58.28.490 Appeals—Procedure. Appeals and writs of review may be prosecuted to the supreme court or the court of appeals from a superior court from the judgment or orders of the superior court in all cases arising under this chapter or said acts of congress as in other cases and the general statutes as to the commencement of actions, bringing the same to trial, making an entry of judgment, the taking and perfecting appeals, and the making up of the records on appeal and relating to writs of review in the superior court, court of appeals, and supreme court, and all other procedure in the superior court, court of appeals, and supreme court shall be applicable to actions under this chapter and under said acts of congress. [1971 c 81 § 127; 1909 c 231 § 49; RRS § 11533. Prior: 1888 c 124 pp 216–220.]

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

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

58.28.520 Controversies, by whom settled—Review. Except as hereinbefore specially provided, the city or town council in incorporated cities and towns, and the judge of the superior court, as trustee, in cases of unincorporated government townsites, are hereby expressly given power and jurisdiction to hear and determine all questions arising under this chapter and under said acts of congress and the right to ascertain who were the occupants of lots in such government townsites at the time of the entry thereof in the United States land office, and to determine from sworn testimony who are and who are not entitled to deeds of conveyance to specific lots in such government townsite, subject to review by courts of competent jurisdiction. [1909 c 231 § 53; RRS § 11536. Prior: 1888 c 124 pp 216–220.]

Title 59

LANDLORD AND TENANT

Chapters

- 59.04** Tenancies.
- 59.08** Default in rent of forty dollars or less.
- 59.12** Forcible entry and forcible and unlawful detainer.
- 59.16** Unlawful entry and detainer.
- 59.18** Residential Landlord-Tenant Act.
- 59.20** Mobile Home Landlord-Tenant Act.

Acknowledgments: Chapter 64.08 RCW.
Action to recover real property, jury trial: RCW 4.40.060.
Adverse possession: Chapter 7.28 RCW.
Boundaries and plats: Title 58 RCW.
Community property: Chapter 26.16 RCW.
County property, sales, leases, etc.: Chapter 36.34 RCW.
Ejectment and quieting title: Chapter 7.28 RCW.
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Housing authorities law: Chapter 35.82 RCW.
Landlord's lien on farm crops: Chapter 60.12 RCW.
Landlord's lien for rent: Chapter 60.72 RCW.
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Chapter 59.04 TENANCIES

Sections

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

59.04.010 Tenancies from year to year abolished except under written contract. Tenancies from year to year

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

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

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

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

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

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

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

Chapter 59.08

DEFAULT IN RENT OF FORTY DOLLARS OR LESS

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

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

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

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

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

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

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

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

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

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

County clerk's fees: RCW 36.18.020.

Sheriff's fees: RCW 36.18.040.

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

59.08.900 Chapter inapplicable to rental agreements under landlord-tenant act. This chapter does not apply to

any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 46.]

Chapter 59.12

FORCIBLE ENTRY AND FORCIBLE AND UNLAWFUL DETAINER

Sections

59.12.010	Forcible entry defined.
59.12.020	Forcible detainer defined.
59.12.030	Unlawful detainer defined.
59.12.035	Holding over on agricultural land, effect of.
59.12.040	Service of notice—Proof of service.
59.12.050	Jurisdiction of proceedings.
59.12.060	Parties defendant.
59.12.070	Complaint—Summons.
59.12.080	Summons—Contents—Service.
59.12.090	Writ of restitution—Bond.
59.12.091	Writ of restitution under landlord—tenant act—RCW 59.12.090, 59.12.100, 59.12.121 and 59.12-.170 inapplicable.
59.12.100	Service of writ—Bond to stay writ.
59.12.110	Modification of bond.
59.12.120	Judgment by default.
59.12.121	Pleading by defendant.
59.12.130	Jury—Actions given preference.
59.12.140	Proof in forcible entry and detainer.
59.12.150	Amendment to conform to proof.
59.12.160	Amendments.
59.12.170	Judgment—Execution.
59.12.180	Rules of practice.
59.12.190	Relief against forfeiture.
59.12.200	Appeal—Stay bond.
59.12.210	Effect of stay bond.
59.12.220	Writ of restitution suspended pending appeal.
59.12.230	Forcible entry and detainer—Penalty.

Joint tenancies: Chapter 64.28 RCW.

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

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

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

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

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

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

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

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

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

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

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

Unlawful detainer defined: RCW 59.16.010.

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

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

properly addressed with postage prepaid: *Provided, however*, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. [1911 c 26 § 1; 1905 c 86 § 2; 1891 c 96 § 5; RRS § 814. Prior: 1890 p 75 § 4.]

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

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

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

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

59.12.080 Summons—Contents—Service. The summons must state the names of the parties to the proceeding, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him. The

summons must be directed to the defendant, and in case of summons by publication, be served at least five days before the return day designated therein. The summons must be served and returned in the same manner as summons in other actions is served and returned. [1927 c 123 § 2; 1891 c 96 § 9; RRS § 818. Prior: 1890 p 76 § 8.]

Summons, generally: RCW 4.28.030–4.28.110.

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

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

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

conspicuous place upon the premises. [1927 c 123 § 4; 1905 c 86 § 3; 1891 c 96 § 11; RRS § 820. Prior: 1890 p 77 § 10.]

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

59.12.120 Judgment by default. If at the time appointed in the summons the defendant do not appear and defend, the court must render judgment in favor of the plaintiff as prayed for in the complaint. [1891 c 96 § 13; RRS § 822. FORMER PART OF SECTION: 1891 c 96 § 14 now codified as RCW 59.12.121.]

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

59.12.130 Jury—Actions given preference. Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending; and in all cases actions under this chapter shall take precedence of all other civil actions. [1891 c 96 § 15; RRS § 824. Prior: 1890 p 79 § 15.]

59.12.140 Proof in forcible entry and detainer. On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to a forcible entry complained of, that he was peaceably in the actual possession at the time of the forcible entry; or, in addition to a forcible detainer complained of, that he was entitled to the possession at

the time of the forcible detainer. [1891 c 96 § 16; RRS § 825. Prior: 1890 p 79 § 16.]

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

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

59.12.170 Judgment—Execution. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his estate; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. [1891 c 96 § 18; RRS § 827. Prior: 1890 p 80 § 18.]

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

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

59.12.200 Appeal—Stay bond. If either party feels aggrieved by the judgment he may appeal to the supreme court or the court of appeals, as in other civil actions: *Provided*, That if the defendant appealing desires a stay of proceedings pending such appeal, he shall execute and file a bond, with two or more sufficient sureties to be approved by the judge, conditioned to abide the order of the court on such appeal, and to pay all rents and other damages justly accruing to the plaintiff during the pendency of the appeal. [1971 c 81 § 128; 1891 c 96 § 22; RRS § 831. Prior: 1890 p 80 § 23.]

59.12.210 Effect of stay bond. When the defendant shall appeal, and shall file a bond as provided in RCW 59.12.200, all further proceedings in the case shall be stayed until the determination of said appeal and the same has been remanded to the superior court for further proceedings therein. [1891 c 96 § 23; RRS § 832. Prior: 1890 p 80 § 24.]

59.12.220 Writ of restitution suspended pending appeal. If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution the said officer shall forthwith cease all further proceedings by virtue of such writ; and if such writ has been completely executed the defendant shall be restored to the possession of the premises, and shall remain in

possession thereof until the appeal is determined. [1891 c 96 § 24; RRS § 833. Prior: 1890 p 81 § 25.]

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

Chapter 59.16

UNLAWFUL ENTRY AND DETAINER

Sections

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

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

Unlawful detainer defined: RCW 59.12.030.

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

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

*Reviser's note: *chapter XLVI of the code of eighteen hundred and eighty-one" referred to in the above section is codified as RCW 7.28-.010, 7.28.110 through 7.28.150 and 7.28.190 through 7.28.270.

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

Chapter 59.18

RESIDENTIAL LANDLORD-TENANT ACT

(Revised June 15, 1977, pursuant to the Washington Supreme Court decision in cause number 43879 entitled WASHINGTON ASS'N. OF APARTMENT ASS'NS., INC. vs. EVANS; 88 Wn. 2d. 563, which declared invalid the fourteen item and section vetoes to 1973 Engrossed Substitute Senate Bill No. 2226 (1973 1st ex. sess., chapter 207). The governor exercised his veto power by attempting to excise parts of sections 6, 7, 8, 11, 19, 23, 24, 25, and 31 and all of sections 43 and 47. The vetoed matter is herein restored as parts of RCW 59-.18.060, 59.18.070, 59.18.080, 59.18.110, 59.18.190, 59.18.230, 59.18-.240, 59.18.250, 59.18.310; and as new sections RCW 59.18.415 and 59.18.430.)

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

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

59.18.030 Definitions. As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

59.18.050 Jurisdiction of district and superior courts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

59.18.070 Landlord—Failure to perform duties—Notice from tenant—Contents—Time limits for landlord's remedial action. If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.18.060, the tenant may, in addition to pursuit of remedies otherwise provided him by law, deliver written notice to the person designated in subsection (11) of RCW 59.18.060, or to the person who collects the rent, which notice shall specify the premises involved, the name of the owner, if known, and the nature of the defective condition. For the purposes of this chapter, a reasonable time for the landlord to commence remedial action after receipt of such notice by the tenant shall be, except where circumstances are beyond the landlord's control;

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

(2) Not more than forty-eight hours, where the landlord fails to provide hot water or electricity;

(3) Subject to the provisions of subsections (1) and (2) of this section, not more than seven days in the case of a repair under RCW 59.18.100(3);

(4) Not more than thirty days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed with reasonable promptness.

Where circumstances beyond the landlord's control, including the availability of financing, prevent him from complying with the time limitations set forth in this section, he shall endeavor to remedy the defective condition with all reasonable speed. [1973 1st ex.s. c 207 § 7.]

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

59.18.090 Landlord's failure to remedy defective condition—Tenant's choice of actions. If, after receipt of written notice, and expiration of the applicable period of time, as provided in RCW 59.18.070, the landlord fails to remedy the defective condition within a reasonable time the tenant may:

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

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

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

59.18.100 Landlord's failure to carry out duties—Repairs effected by tenant—Bids—Notice—Deduction of cost from rent—Limitations. (1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.18.060, and notice of the defect is given to the landlord pursuant to RCW 59.18.070, the tenant may submit to the landlord or his designated agent by certified mail or in person at least two bids to perform the repairs necessary to correct the defective condition from licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, from responsible persons capable of performing such repairs. Such bids may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.18.070:

Provided, That the remedy provided in this section shall not be available for a landlord's failure to carry out the duties in subsections (6), (9), and (11) of RCW 59.18.060.

(2) If the landlord fails to commence repair of the defective condition within a reasonable time after receipt of notice from the tenant, the tenant may contract with the person submitting the lowest bid to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or his designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any twelve-month period: *Provided*, That when the landlord must commence to remedy the defective condition within thirty days as provided in subsection (4) of RCW 59.18.070, the tenant cannot contract for repairs for at least fifteen days following receipt of said bids by the landlord: *Provided further*, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit.

(3) If the landlord fails to carry out the duties imposed by RCW 59.18.060 within a reasonable time, and if the cost of repair does not exceed one-half month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent: *Provided*, That repairs under this subsection are limited to defects within the leased premises: *Provided further*, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one-half month's rent of the unit or seventy-five dollars in any twelve-month period, whichever is the lesser.

(4) The provisions of this section shall not:

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

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

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

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

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

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

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

(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord in accordance with RCW 59.18.070 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the premises due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to RCW 59.18.100 for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

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

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

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

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

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

(2) Properly dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in

a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so;

(5) Not permit a nuisance or common waste; and

(6) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his obligations under this chapter: *Provided*, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee. [1973 1st ex.s. c 207 § 13.]

59.18.140 Reasonable obligations or restrictions—Tenant's duty to conform. The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agreement, rent, or otherwise, concerning the use, occupation, and maintenance of his dwelling unit, appurtenances thereto, and the property of which the dwelling unit is a part if such obligations and restrictions are not in violation of any of the terms of this chapter and are not otherwise contrary to law, and if such obligations and restrictions are brought to the attention of the tenant at the time of his initial occupancy of the dwelling unit and thus become part of the rental agreement. Except for termination of tenancy, after thirty days written notice to each tenant, a new rule of tenancy may become effective upon completion of the term of the rental agreement or sooner upon mutual consent. [1973 1st ex.s. c 207 § 14.]

59.18.150 Landlord's right of entry—Purposes—Conditions. (1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his intent to enter and shall enter only at reasonable times.

(4) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant. [1973 1st ex.s. c 207 § 15.]

59.18.160 Landlord's remedies if tenant fails to remedy defective condition. If, after receipt of written notice,

as provided in RCW 59.18.170, the tenant fails to remedy the defective condition within a reasonable time, the landlord may:

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

(2) Pursue other remedies available under this chapter. [1973 1st ex.s. c 207 § 16.]

59.18.170 Landlord to give notice if tenant fails to carry out duties. If at any time during the tenancy the tenant fails to carry out the duties required by RCW 59.18.130 or 59.18.140, the landlord may, in addition to pursuit of remedies otherwise provided by law, give written notice to the tenant of said failure, which notice shall specify the nature of the failure. [1973 1st ex.s. c 207 § 17.]

59.18.180 Tenant's failure to comply with statutory duties—Landlord to give tenant written notice of non-compliance—Landlord's remedies. If the tenant fails to comply with any portion of RCW 59.18.130 or 59.18.140, and such noncompliance can substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident that can be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance, or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. Any substantial noncompliance by the tenant of RCW 59.18.130 or 59.18.140 shall constitute a ground for commencing an action in unlawful detainer in accordance with the provisions of chapter 59.12 RCW, and a landlord may commence such action at any time after written notice pursuant to such chapter. The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter 59.12 RCW that the tenant is in substantial compliance with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: *Provided*, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorney's fees. [1973 1st ex.s. c 207 § 18.]

59.18.190 Notice to tenant to remedy nonconformance. Whenever the landlord learns of a breach of RCW 59.18.130 or has accepted performance by the tenant which is at variance with the terms of the rental agreement or rules enforceable after the commencement of

the tenancy, he may immediately give notice to the tenant to remedy the nonconformance. Said notice shall expire after sixty days unless the landlord pursues any remedy under this chapter. [1973 1st ex.s. c 207 § 19.]

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

(2) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership or plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ninety days before termination of the tenancy to effectuate such change in policy. Such ninety-day notice shall be in lieu of the notice required by subsection (1) of this section: *Provided*, That if after giving the ninety-day notice the change in policy is delayed, the notice requirements of subsection (1) of this section shall apply unless waived by the tenant. [1979 1st ex.s. c 70 § 1; 1973 1st ex.s. c 207 § 20.]

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

59.18.210 Tenancies from year to year except under written contract. Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals. [1973 1st ex.s. c 207 § 21.]

59.18.220 Termination of tenancy for a specified time. In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time. [1973 1st ex.s. c 207 § 22.]

59.18.230 Waiver of chapter provisions prohibited—Provisions prohibited from rental agreement—Distress for rent abolished—Detention of personal property for rent—Remedies. (1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorney's fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific consent of the tenant to such incident of taking or detention, unless the property has been abandoned as described in RCW 59.18.310, and who, after written demand by the tenant for the return of his personal property, refuses or neglects to return the same promptly shall be liable to the tenant for the value of the property retained, and the prevailing party may recover his costs of suit and a reasonable attorney's fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property. [1973 1st ex.s. c 207 § 23.]

59.18.240 Reprisals or retaliatory actions by landlord—Prohibited. So long as the tenant is in compliance with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

(1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant;

(2) Assertions or enforcement by the tenant of his rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

(1) Eviction of the tenant other than giving a notice to terminate tenancy as provided in RCW 59.18.200;

(2) Increasing the rent required of the tenant;

(3) Reduction of services to the tenant;

(4) Increasing the obligations of the tenant. [1973 1st ex.s. c 207 § 24.]

59.18.250 Reprisals or retaliatory actions by landlord—Presumptions—Rebuttal—Costs. Initiation by the landlord of any action listed in RCW 59.18.240 within ninety days after a good faith and lawful act by the tenant as enumerated in RCW 59.18.240, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: *Provided*, That if the court finds that the tenant made a complaint or report to a governmental authority within ninety days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: *Provided further*, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter: *Provided further*, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his claim he shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee: *Provided further*, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them. [1973 1st ex.s. c 207 § 25.]

59.18.260 Moneys paid as deposit or security for performance by tenant—Rental agreement to specify terms and conditions for retention by landlord. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a lease or rental agreement, such lease or rental agreement shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the lease or rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the premises for which the tenant is responsible, or if all or part thereof may be retained by the landlord as a nonreturnable cleaning fee, the rental agreement shall so specify. No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises. [1973 1st ex.s. c 207 § 26.]

59.18.270 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims. All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the

landlord, in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in Washington. Unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address and location of the new depository. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled. [1975 1st ex.s. c 233 § 1; 1973 1st ex.s. c 207 § 27.]

59.18.280 Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention—Costs. Within fourteen days after the termination of the rental agreement and vacation of the premises the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises.

The notice shall be delivered to the tenant personally or by mail to his last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he shall be liable to the tenant for the amount of refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorney's fee.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorney's fees. [1973 1st ex.s. c 207 § 28.]

59.18.290 Removal or exclusion of tenant from premises—Holding over or excluding landlord from premises after termination date. (1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.

(2) It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid

court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him, and the prevailing party may recover his costs of suit or arbitration and reasonable attorney's fees. [1973 1st ex.s. c 207 § 29.]

59.18.300 Termination of tenant's utility services—Tenant causing loss of landlord provided utility services. It shall be unlawful for a landlord to intentionally cause termination of any of his tenant's utility services, including water, heat, electricity, or gas, except for an interruption of utility services for a reasonable time in order to make necessary repairs. Any landlord who violates this section may be liable to such tenant for his actual damages sustained by him, and up to one hundred dollars for each day or part thereof the tenant is thereby deprived of any utility service, and the prevailing party may recover his costs of suit or arbitration and a reasonable attorney's fee. It shall be unlawful for a tenant to intentionally cause the loss of utility services provided by the landlord, including water, heat, electricity or gas, excepting as resulting from the normal occupancy of the premises. [1973 1st ex.s. c 207 § 30.]

59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies. If the tenant defaults in the payment of rent and reasonably indicates by words or actions his intention not to resume tenancy, he shall be liable for the following for such abandonment: *Provided*, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

(a) The entire rent due for the remainder of the term; or

(b) All rent accrued during the period reasonably necessary to rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in rerenting the premises together with statutory court costs and reasonable attorney's fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in a secure place. A notice containing the name and address of landlord and the place where the property is stored must be mailed promptly by the landlord to the last known address of the tenant. After sixty days from the date of default in rent, and after prior notice of such sale is mailed to the last known address of the tenant, the landlord may sell

such property and may apply any income derived therefrom against moneys due the landlord, including drayage and storage. Any excess income derived from the sale of such property shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord. [1973 1st ex.s. c 207 § 31.]

59.18.320 Arbitration—Authorized—Exceptions—Notice—Procedure. (1) The landlord and tenant may agree, in writing, except as provided in RCW 59.18.230(2)(e), to submit to arbitration, in conformity with the provisions of this section, any controversy arising under the provisions of this chapter, except the following:

(a) Controversies regarding the existence of defects covered in subsections (1) and (2) of RCW 59.18.070: *Provided*, That this exception shall apply only before the implementation of any remedy by the tenant;

(b) Any situation where court action has been started by either landlord or tenant to enforce rights under this chapter; when the court action substantially affects the controversy, including but not limited to:

(i) Court action pursuant to subsections (2) and (3) of RCW 59.18.090 and subsections (1) and (2) of RCW 59.18.160; and

(ii) Any unlawful detainer action filed by the landlord pursuant to chapter 59.12 RCW.

(2) The party initiating arbitration under subsection (1) of this section shall give reasonable notice to the other party or parties.

(3) Except as otherwise provided in this section, the arbitration process shall be administered by any arbitrator agreed upon by the parties at the time the dispute arises: *Provided*, That the procedures shall comply with the requirements of chapter 7.04 RCW (relating to arbitration) and of this chapter. [1973 1st ex.s. c 207 § 32.]

59.18.330 Arbitration—Application—Hearings—Decisions. (1) Unless otherwise mutually agreed to, in the event a controversy arises under RCW 59.18.320 the landlord or tenant, or both, shall complete an application for arbitration and deliver it to the selected arbitrator.

(2) The arbitrator so designated shall schedule a hearing to be held no later than ten days following receipt of notice of the controversy, except as provided in RCW 59.18.350.

(3) The arbitrator shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties, who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings may be taken. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator shall have the power to administer oaths, to issue subpoenas, to require the attendance of witnesses and

the production of such books, papers, contracts, agreements, and documents as may be deemed by the arbitrator material to a just determination of the issues in dispute. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the arbitrator may invoke the jurisdiction of any superior court, and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof.

(4) Within five days after conclusion of the hearing, the arbitrator shall make a written decision upon the issues presented, a copy of which shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The determination of the dispute made by the arbitrator shall be final and binding upon both parties.

(5) If a defective condition exists which affects more than one dwelling unit in a similar manner, the arbitrator may consolidate the issues of fact common to those dwelling units in a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed according to the provisions of chapter 7.04 RCW. [1973 1st ex.s. c 207 § 33.]

59.18.340 Arbitration—Fee. The administrative fee for this arbitration procedure shall be seventy dollars, and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties: *Provided*, That upon either party signing an affidavit to the effect that he is unable to pay his share of the fee, that portion of the fee may be waived or deferred. [1973 1st ex.s. c 207 § 34.]

59.18.350 Arbitration—Completion of arbitration after giving notice. When a party gives notice pursuant to subsection (2) of RCW 59.18.320, he must, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice pursuant to RCW 59.18.320: *Provided*, That in no event shall the arbitrator have less than ten days to complete the arbitration process. [1973 1st ex.s. c 207 § 35.]

59.18.360 Exemptions. A landlord and tenant may agree, in writing, to exempt themselves from the provisions of RCW 59.18.060, 59.18.100, 59.18.110, 59.18.120, 59.18.130, and 59.18.190 if the following conditions have been met:

(1) The agreement may not appear in a standard form lease or rental agreement;

(2) There is no substantial inequality in the bargaining position of the two parties;

(3) The exemption does not violate the public policy of this state in favor of the ensuring safe, and sanitary housing; and

(4) Either the local county prosecutor's office or the consumer protection division of the attorney general's office or the attorney for the tenant has approved in writing the application for exemption as complying with

subsections (1) through (3) of this section. [1973 1st ex.s. c 207 § 36.]

59.18.370 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Application—Order—Hearing. The plaintiff, at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, upon filing the complaint, may apply to the superior court in which the action is pending for an order directing the defendant to appear and show cause, if any he has, why a writ of restitution should not issue restoring to the plaintiff possession of the property in the complaint described, and the judge shall by order fix a time and place for a hearing of said motion, which shall not be less than six nor more than twelve days from the date of service of said order upon defendant. A copy of said order, together with a copy of the summons and complaint if not previously served upon the defendant, shall be served upon the defendant. Said order shall notify the defendant that if he fails to appear and show cause at the time and place specified by the order the court may order the sheriff to restore possession of the property to the plaintiff and may grant such other relief as may be prayed for in the complaint and provided by this chapter. [1973 1st ex.s. c 207 § 38.]

59.18.380 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer—Order—Stay—Bond. At the time and place fixed for the hearing of plaintiff's motion for a writ of restitution, the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy. If the answer is oral the substance thereof shall be endorsed on the complaint by the court. The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution, returnable ten days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof, and the court may grant such other relief as may be prayed for in the plaintiff's complaint and provided for in this chapter, then the court shall enter an order denying any relief sought by the plaintiff for which the court has determined that the plaintiff has no right as a matter of law: *Provided*, That within three days after the service of the writ of restitution the defendant, or person in possession of the property, may, in any action for the recovery of possession of the property for failure to pay rent, stay the execution of the writ pending final judgment by paying into court or to the plaintiff, as the court directs, all rent found to be due and all the costs of the action, and in addition by

paying, on a monthly basis pending final judgment, an amount equal to the monthly rent called for by the lease or rental agreement at the time the complaint was filed: *Provided further*, That before any writ shall issue prior to final judgment the plaintiff shall execute to the defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner.

If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer. If it appears to the court that there is a substantial issue of material fact as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff's complaint and provided for in this chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer, the court shall grant or deny so much of plaintiff's other relief sought and so much of defendant's defenses or set-off claimed, as may be proper. [1973 1st ex.s. c 207 § 39.]

59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant's bond. The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent, or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this chapter, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises. [1973 1st ex.s. c 207 § 40.]

59.18.400 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer of defendant. On or before the day fixed for his appearance the defendant may appear and answer. The defendant in his answer may assert any legal or equitable defense or set-off arising out of the tenancy. [1973 1st ex.s. c 207 § 41.]

59.18.410 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Judgment—Execution. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for the amount of damages thus assessed and for the rent, if any, found due, and the court may award statutory costs and reasonable attorney's fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his tenancy; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. [1973 1st ex.s. c 207 § 42.]

59.18.415 Applicability to certain single family dwelling leases. The provisions of this chapter shall not apply to any lease of a single family dwelling for a period of a year or more or to any lease of a single family dwelling containing a bona fide purchase by the tenant: *Provided*, That an attorney for the tenant must approve on the face of the agreement any lease exempted from the provisions of this chapter as provided for in this section. [1973 1st ex.s. c 207 § 43.]

59.18.420 RCW 59.12.090, 59.12.100, 59.12.121 and 59.12.170 inapplicable. The provisions of RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 shall not apply to any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 44.]

59.18.430 Applicability to prior, existing or future leases. RCW 59.18.010 through 59.18.360 and 59.18.900 shall not apply to any lease entered into prior to July 16, 1973. All provisions of this chapter shall apply to any lease or periodic tenancy entered into on or subsequent to July 16, 1973. [1973 1st ex.s. c 207 § 47.]

59.18.900 Severability—1973 1st ex.s. c 207. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act, or its application to other persons or circumstances, is not affected. [1973 1st ex.s. c 207 § 37.]

Chapter 59.20

MOBILE HOME LANDLORD-TENANT ACT

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59.20.010 Short title. This chapter shall be known and may be cited as the "Mobile Home Landlord-Tenant Act". [1977 ex.s. c 279 § 1.]

59.20.020 Rights and remedies—Obligation of good faith required. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [1977 ex.s. c 279 § 2.]

59.20.030 Definitions. For purposes of this chapter:

(1) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;

(2) "Mobile home lot" means a portion of a mobile home park designated as the location of one mobile home and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home;

(3) "Mobile home park" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(4) "Tenant" means any person, except a transient, who rents a mobile home lot;

(5) "Transient" means a person who rents a mobile home lot for a period of less than one month. [1979 1st ex.s. c 186 § 1; 1977 ex.s. c 279 § 3.]

Severability—1979 1st ex.s. c 186: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 1st ex.s. c 186 § 30.]

59.20.040 Chapter applies to rental agreements regarding mobile home lots—Applicability of and construction with provisions of chapter 59.12 RCW and chapter 59.18 RCW. This chapter shall regulate and determine legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, whose uses are referred to as a part of the rent structure paid by the tenant. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. Chapter 59.12 RCW shall be applicable only in implementation of the provisions of this chapter and not as an alternative remedy to this chapter which shall be exclusive where applicable: *Provided*, That the provision of RCW 59.12.090, 59.12.100, and 59.12.170 shall not apply to any rental agreement included under the provisions of this chapter. RCW 59.18.370 through 59.18.410 shall be applicable to any action of forcible entry or detainer or unlawful detainer arising from a tenancy under the provisions of this chapter. Rentals of mobile homes themselves are governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW. [1979 1st ex.s. c 186 § 2; 1977 ex.s. c 279 § 4.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.050 Written rental agreement for term of one year or more required—Waiver—Exceptions—Preexisting tenancies. (1) On and after September 21, 1977, no landlord may offer a mobile home lot for rent without offering to a prospective tenant a written rental agreement for a term of one year or more. No landlord may offer to a tenant or prospective tenant any rental agreement for a term of one year or more for which the monthly rental is greater, or the terms of payment or

other material conditions more burdensome to the tenant, than any month-to-month rental agreement also offered to such tenant or prospective tenant. A prospective tenant who desires to occupy a mobile home lot for other than a term of one year or more may have the option to be on a month-to-month basis but must waive, in writing, the right to such one year or more term. Except pursuant to such waiver, no landlord shall allow a mobile home to be moved into a mobile home park in this state until a written rental agreement has been signed by the landlord and the tenant and a copy provided for the tenant: *Provided*, That if the landlord allows the tenant to move a mobile home into a mobile home park without obtaining a written rental agreement for a term of one year or more, or a written waiver of the right to a one-year term or more, the term of the tenancy shall be deemed to be for one year from the date of occupancy of the mobile home lot;

(2) The requirements of subsection (1) of this section shall not apply if:

(a) The mobile home park or part thereof has been acquired or is under imminent threat of condemnation for a public works project, or

(b) An employer-employee relationship exists between a landlord and tenant;

(3) The provisions of this section shall apply to any tenancy in existence prior to September 21, 1977, upon expiration of the term of any oral or written rental agreement governing such tenancy. [1979 1st ex.s. c 186 § 3; 1977 ex.s. c 279 § 5.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.060 Rental agreements—Required contents—Exclusions. (1) Any mobile home lot tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties, which shall contain:

(a) The terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant;

(b) Reasonable rules for guest parking which shall be clearly stated;

(c) The rules and regulations of the park;

(d) The name and address of the person who is the landlord, and if such person does not reside in the state where the mobile home park is located there shall also be designated by name and address a person who resides in the county where the mobile home park is located who is authorized to act as agent for the purposes of service of notices and process. If no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered the agent;

(e) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement;

(f) A listing of those utilities and services which will be provided at the time the rental agreement is executed and will continue to be offered for the term of tenancy and the nature of the fees, if any, to be charged; and

(g) A description of the boundaries of a mobile home lot sufficient to inform the tenant of the exact location of his lot in relation to other tenants' lots.

(2) Any rental agreement executed between the landlord and tenant shall not contain:

(a) Any provision which allows the landlord to charge a fee for guest parking unless a violation of the rules for guest parking occurs: *Provided*, That a fee may be charged for guest parking which covers an extended period of time as defined in the rental agreement;

(b) Any provision which authorizes the towing or impounding of a vehicle except upon notice to the owner thereof or the tenant whose guest is the owner of said vehicle;

(c) Any provision which allows the landlord to increase the rent or alter the due date for rent payment during the term of the rental agreement: *Provided*, That a rental agreement may include an escalation clause for a pro rata share of any increase in the mobile home park's real property taxes or utility assessments or charges, over the base taxes or utility assessments or charges of the year in which the rental agreement took effect, if the clause also provides for a pro rata reduction in rent or other charges in the event of a reduction in real property taxes or utility assessments or charges, below the base year;

(d) Any provision by which the tenant agrees to waive or forego rights or remedies under this chapter;

(e) Any provision allowing the landlord to charge an "entrance fee" or an "exit fee"; or

(f) Any provision which allows the landlord to charge a fee for guests: *Provided*, That a landlord may establish rules charging for guests who remain on the premises for more than fifteen days in any sixty-day period. [1979 1st ex.s. c 186 § 4; 1977 ex.s. c 279 § 6.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.070 Prohibited acts by landlord. A landlord shall not:

(1) Deny any tenant the right to sell such tenant's mobile home within a park or require the removal of the mobile home from the park solely because of the sale thereof: *Provided*, That:

(a) A rental agreement for a fixed term shall be assignable by the tenant to any person to whom he sells or transfers title to the mobile home, subject to the approval of the landlord after fifteen days' written notice of such intended assignment;

(b) The assignee of the rental agreement shall assume all the duties and obligations of his assignor for the remainder of the term of the rental agreement unless, by mutual agreement, a new rental agreement is entered into with the landlord; and

(c) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any new tenant;

(2) Restrict the tenant's freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior structural improvements on a mobile home lot: *Provided*, That door-to-door solicitation in the mobile home park may be restricted in the rental agreement;

(3) Prohibit meetings by tenants of the mobile home park to discuss mobile home living and affairs, conducted at reasonable times and in an orderly manner on the premises, nor penalize any tenant for participation in such activities;

(4) (a) Evict a tenant, terminate a rental agreement, decline to renew a rental agreement, increase rental or other tenant obligations, decrease services, or modify park rules in retaliation for any of the following actions on the part of a tenant taken in good faith:

(i) Filing a complaint with any state, county, or municipal governmental authority relating to any alleged violation by the landlord of an applicable statute, regulation, or ordinance;

(ii) Requesting the landlord to comply with the provision of this chapter or other applicable statute, regulation, or ordinance of the state, county, or municipality;

(iii) Filing suit against the landlord for any reason;

(iv) Participation or membership in any homeowners association or group;

(b) In determining whether an action by a landlord is retaliatory, the presumptions set forth in RCW 59.18-.250 shall apply; or

(5) Charge to any tenant a utility fee in excess of actual utility costs. [1979 1st ex.s. c 186 § 5; 1977 ex.s. c 279 § 7.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.080 Grounds for termination of tenancy—**Notice.** (1) Except as provided in subsection (2) of this section, the landlord shall not terminate a tenancy, of whatever duration, except for one or more of the following reasons:

(a) Substantial or repeated violation of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140 as now or hereafter amended. The tenant shall be given written notice of a fifteen day period in which to comply or vacate: *Provided*, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice of a six month period in which to comply or vacate. In the case of periodic rather than continuous violation, said notice shall specify that the same violation repeated shall result in termination;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be

given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes or mobile home living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park: *Provided*, That the landlord shall give the tenants twelve months' notice in advance of the proposed effective date of such change.

(2) A landlord may terminate any tenancy without cause. Such termination shall be effective six months from the date the landlord serves notice of termination upon the tenant or at the end of the current tenancy, whichever is later: *Provided*, That a landlord may not terminate a tenancy for any reason or basis which is prohibited under RCW 59.20.070 (3) or (4), as now or hereafter amended. [1979 1st ex.s. c 186 § 6; 1977 ex.s. c 279 § 8.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.090 Term of rental agreements—Renewal—Nonrenewal—Termination—Notices. (1) Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for an additional six-month term or for the term of the original rental agreement, whichever is shorter unless:

(a) A different specified term is agreed upon; or

(b) The landlord serves notice of termination without cause upon the tenant prior to the expiration of the rental agreement: *Provided*, That under such circumstances, at the expiration of the prior rental agreement the tenant shall be considered a month-to-month tenant upon the same terms as in the prior rental agreement until the tenancy is terminated.

(2) A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent: *Provided*, That if a landlord serves a tenant with notice of a rental increase at the same time or subsequent to serving the tenant with notice of termination without cause, such rental increase shall not become effective until the date the tenant is required to vacate the leased premises pursuant to the notice of termination or three months from the date notice of rental increase is served, whichever is later.

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

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

rental specified in the rental agreement until the lot is rented or the original term ends;

(b) Any tenant who is a member of the armed forces may terminate a rental agreement with less than thirty days notice if he receives reassignment orders which do not allow greater notice. [1979 1st ex.s. c 186 § 7; 1977 ex.s. c 279 § 9.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.100 Improvements. Improvements, except a natural lawn, purchased and installed by a tenant on a mobile home lot shall remain the property of the tenant even though affixed to or in the ground and may be removed or disposed of by the tenant prior to the termination of the tenancy: *Provided*, That a tenant shall leave the mobile home lot in substantially the same or better condition than upon taking possession. [1977 ex.s. c 279 § 10.]

59.20.110 Attorney's fees and costs. In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs. [1977 ex.s. c 279 § 11.]

59.20.120 Venue. Venue for any action arising under this chapter shall be in the district or superior court of the county in which the mobile home lot is located. [1977 ex.s. c 279 § 12.]

59.20.130 Duties of landlord. It shall be the duty of the landlord to:

(1) Maintain the common premises and prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water when such condition is not the fault of the tenant;

(2) Keep any shared or common premises reasonably clean, sanitary, and safe from defects to reduce the hazards of fire or accident;

(3) Keep all common premises of the mobile home park, not in the possession of tenants, free of weeds or plant growth noxious and detrimental to the health of the tenants and free from potentially injurious or unsightly objects and condition;

(4) Exterminate or make a reasonable effort to exterminate rodents, vermin, or other pests dangerous to the health and safety of the tenant whenever infestation exists on the common premises or whenever infestation occurs in the interior of a mobile home as a result of infestation existing on the common premises;

(5) Maintain and protect all utilities provided to the mobile home in good working condition. Maintenance responsibility shall be determined at that point where the normal mobile home utilities "hook-ups" connect to those provided by the landlord or utility company;

(6) Respect the privacy of the tenants and shall have no right of entry to a mobile home without the prior written consent of the occupant, except in case of emergency or when the occupant has abandoned the mobile home. Such consent may be revoked in writing by the occupant at any time. The ownership or management shall have a right of entry upon the land upon which a

mobile home is situated for maintenance of utilities and protection of the mobile home park at any reasonable time, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment;

(7) Allow tenants freedom of choice in the purchase of goods and services, and not unreasonably restrict access to the mobile home park for such purposes; and

(8) Maintain roads within the mobile home park in good condition. [1979 1st ex.s. c 186 § 8.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

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

(1) Keep the mobile home lot which he occupies and uses as clean and sanitary as the conditions of the premises permit;

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

(3) Not intentionally or negligently destroy, deface, damage, impair, or remove any facilities, equipment, furniture, furnishings, fixtures or appliances provided by the landlord, or permit any member of his family, invitee, or licensee, or any person acting under his control to do so; and

(4) Not permit a nuisance or common waste. [1979 1st ex.s. c 186 § 9.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.150 Service of notice on landlord or tenant. (1) Any notice required by this chapter to be given to a tenant shall be served on behalf of the landlord: (a) By delivering a copy personally to the tenant; or (b) if the tenant is absent from the mobile home, by leaving a copy at the mobile home with some person of suitable age and discretion and by sending a copy through the mail addressed to the tenant's place of residence; or (c) if the tenant is absent from the mobile home and a person of suitable age and discretion cannot be found to leave a copy with, then by affixing a copy of the notice in a conspicuous place on the mobile home and also sending a copy through the mail addressed to the tenant at the tenant's last known address.

(2) Any notice required by this chapter to be given to the landlord shall be served by the tenant in the same manner as provided for in subsection (1) of this section, or by mail to the landlord at such place as shall be expressly provided in the rental agreement.

(3) The landlord shall state in any notice of eviction required by RCW 59.20.080(1) as now or hereafter amended the specific reason for eviction in a clear and concise manner. [1979 1st ex.s. c 186 § 10.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.160 Moneys paid as deposit or security for performance by tenant—Rental agreement to specify terms and conditions for retention by landlord. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement, such rental agreement shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the mobile home lot for which the tenant is responsible, the rental agreement shall so specify. [1979 1st ex.s. c 186 § 11.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.170 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims. All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in Washington. Unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address and location of the new depository. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled. [1979 1st ex.s. c 186 § 12.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.180 Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention—Costs. Within fourteen days after the termination of the rental agreement and vacation of the mobile home lot, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the mobile home lot.

The statement shall be delivered to the tenant personally or by mail to the last known address. If the landlord

fails to give such statement together with any refund due the tenant within the time limits specified above such landlord shall be liable to the tenant for the full amount of the refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall be entitled to the cost of suit or arbitration including a reasonable attorney's fee.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorney's fees and costs of suit. [1979 1st ex.s. c 186 § 13.]

Severability—1979 1st ex.s. c 186: See note following RCW 59.20.030.

59.20.900 Severability—1977 ex.s. c 279. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 279 § 13.]

Title 60

LIENS

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Chapter 60.04

MECHANICS' AND MATERIALMEN'S LIENS

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60.04.010 Lien authorized—Bond by railroad company. Every person performing labor upon, furnishing material, or renting, leasing or otherwise supplying equipment, to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power or any other structure or who performs labor in any mine or mining claim or stone quarry, or trustees of any type of employee benefit plan, has a lien upon the same for the labor performed, contributions owed to the employee benefit plan on account of such labor performed, material furnished, or equipment supplied by each, respectively, whether performed, furnished, or supplied at the instance of the owner of the property subject to the lien or his agent; and every registered or licensed contractor, registered or licensed subcontractor, architect, or person having charge, of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this chapter: *Provided*, That whenever any railroad company shall contract with any person for the construction of its road, or any part thereof, such railroad company shall take from the person with whom such contract is made a good and sufficient bond, conditioned that such person shall pay all laborers, mechanics, materialmen, and equipment suppliers, and persons who supply such contractors with provisions, all just dues to such person or to any person to whom any part of such work is given, incurred in carrying on such work, which bond shall be filed by such railroad company in the office of the county auditor in each county in which any part of such work is situated. And if any such railroad company shall fail to take such bond, such railroad company shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor. Contractors or subcontractors required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW shall be deemed the agents of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW covering the period when the work or material shall be furnished, and lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. [1975 c 34 § 3; 1971 ex.s. c 94 § 2; 1959 c 279 § 1; 1905 c 116 § 1; 1893 c 24 § 1; RRS § 1129. Prior: Code 1881 § 1957; 1877 p 219 § 19; 1873 p 441 § 2; 1863 p 419 § 1; 1860 p 286 § 1; 1854 p 392 § 1.]

Effective date—1971 ex.s. c 94: See note following RCW 60.04.060.

Construction—1893 c 24: "The provisions of law relating to liens created by this act, and all proceedings thereunder, shall be liberally construed with a view to effect their objects." [1893 c 24 § 18.]

Repeal and saving—1893 c 24: "All rights acquired under any existing law of this state are hereby preserved, and all actions now pending shall be proceeded with under the law as it exists at the time this act shall take effect. All acts or parts of acts in conflict with this act are hereby repealed." [1893 c 24 § 19.]

The two foregoing annotations apply to RCW 60.04.010, 60.04.030–60.04.180.

60.04.020 Notice that materialmen's lien may be claimed. Every person, firm or corporation furnishing materials or supplies or renting, leasing or otherwise supplying equipment, to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power, or any other building, or any other structure, or mining claim or stone quarry, shall give to the owner or reputed owner of the property on, upon or about which such materials or supplies or equipment is and/or were used, a notice in writing, which notice shall cover the material, supplies or equipment furnished or leased during the sixty days preceding the giving of such notice as well as all subsequent materials, supplies or equipment furnished or leased, stating in substance and effect that such person, firm or corporation is and/or has furnished materials and supplies, or equipment for use thereon, with the name of the contractor or agent ordering the same, and that a lien may be claimed for all materials and supplies, or equipment furnished by such person, firm or corporation for use thereon, which notice shall be given by (1) mailing the same by registered or certified mail in an envelope addressed to the owner or reputed owner at his place of residence or reputed residence, or (2) by serving the same personally upon the owner or reputed owner and obtaining evidence of such service in the form of a receipt or other acknowledgment signed by such owner or reputed owner: *Provided, however,* That with respect to materials or supplies or equipment used in construction, alteration or repair of any single family residence or garage such notice must be given not later than ten days after the date of the first delivery of such materials or supplies or equipment. No materialmen's lien shall be enforced unless the provisions of this section have been complied with: *Provided,* That in the event the notice required by this section is not given within the time specified by this section, any lien or claim of lien shall be enforceable only for materials and supplies or equipment delivered subsequent to such notice being given to the owner or reputed owner, and such lien or claim of lien shall be secondary to any lien or claim of lien established where such notice was given within the time limits prescribed by this section. [1977 ex.s. c 57 § 1; 1969 ex.s. c 84 § 1; 1965 c 98 § 1; 1959 c 279 § 2; 1959 c 278 § 1; 1957 c 214 § 1; 1911 c 77 § 1; 1909 c 45 § 1; RRS § 1133.]

Effective date—1977 ex.s. c 57: "This 1977 amendatory act shall take effect January 1, 1978." [1977 ex.s. c 57 § 2.]

60.04.030 Property subject to lien. The lot, tract or parcel of land upon which the improvement is made or the property is situated, subject to the lien created by RCW 60.04.010, or so much thereof as may be necessary to satisfy the lien and the judgment thereon, to be determined by the court on rendering judgment in a foreclosure of the lien, is also subject to the lien to the extent of the interest of the person or company, who in his or its own behalf, or who, through any of the persons designated in RCW 60.04.010 to be agent of the owner or owners caused the performance of the labor, or the construction, alteration or repair of the property. [1905 c 116 § 2; 1893 c 24 § 2; RRS § 1130. Prior: Code 1881 § 1959; 1877 p 220 § 21.]

60.04.040 Lien for improving real property. Any person who, at the request of the owner of any real property, or his agent, clears, grades, fills in or otherwise improves the same, or any street or road in front of, or adjoining the same, and every person who, at the request of the owner of any real property, or his agents, rents, leases, or otherwise supplies equipment, or furnishes materials, including blasting powder, dynamite, caps and fuses, for clearing, grading, filling in, or otherwise improving any real property or any street or road in front of or adjoining the same, and every trustee of any type of employee benefit plan, has a lien upon such real property for the labor performed, contributions owed to the employee benefit plan on account of the labor performed, the materials furnished, or the equipment supplied for such purposes. [1975 c 34 § 4; 1971 ex.s. c 94 § 3; 1959 c 279 § 3; 1929 c 230 § 1; 1893 c 24 § 3; RRS § 1131. Prior: Code 1881 § 1958; 1877 p 220 § 20.]

Effective date—1971 ex.s. c 94: See note following RCW 60.04.060.

60.04.050 Priority of lien. The liens created by this chapter are preferred to any lien, mortgage or other incumbrance which may attach subsequently to the time of the commencement of the performance of the labor, the obligation to pay contributions to any type of employee benefit plan, the furnishing of the materials, or the supplying of the equipment for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other incumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant had no notice. [1975 c 34 § 5; 1959 c 279 § 4; 1893 c 24 § 4; RRS § 1132. Prior: Code 1881 § 1960; 1877 p 220 § 22.]

60.04.060 Claim—Contents—Form—Filing—Joinder. No lien created by this chapter shall exist, and no action to enforce the same shall be maintained, unless within ninety days from the date the contributions to any type of employee benefit plan are due, of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment, a claim for such lien shall be filed for record as hereinafter provided, in the office of the county auditor of the county in which the property, or some part

thereof to be affected thereby, is situated. Such claim shall state, as nearly as may be, the date contributions to any type of employee benefit plan became due, the time of the commencement and cessation of performing the labor, furnishing the material, or supplying the equipment, the names of the trustees of the employee benefit plan, the name of the person who performed the labor, furnished the material, or supplied the equipment, the name of the person by whom the laborer was employed (if known), the name of the person required by agreement or otherwise to pay contributions to any type of employee benefit plan, or to whom the material was furnished, or equipment supplied, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, and if not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the claimant, or by some person in his behalf, and be verified by the oath of the claimant, or some person in his behalf, to the effect that the affiant believes the claim to be just; in case the claim shall have been assigned the name of the assignee shall be stated; and such claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, insofar as the interests of third parties shall not be affected by such amendment. A claim of lien shall also state the address of the claimant. A claim of lien by trustees of any type of employee benefit plan shall state, as nearly as is known to the trustees, the names of all employees on whose behalf contributions are claimed. A claim for lien substantially in the following form shall be sufficient:

-----, claimant, vs. -----

Notice is hereby given that on the ----- day (date of commencement of performing labor or contributions to any type of employee benefit plan became due or furnishing material or supplying equipment) ----- at the request of ----- commenced to perform labor (or to furnish material or supply equipment to be used) upon ----- (here describe property subject to the lien) of which property the owner, or reputed owner, is ----- (or if the owner or reputed owner is not known, insert the word "unknown"), the performance of which labor (or the furnishing of which material or supply of which equipment) ceased on the ----- day of -----; that said labor performed (the amount of contributions owed or material furnished or equipment supplied) was of the value of ----- dollars, for which labor (or contributions) (or material) (or equipment) the undersigned claims a lien upon the property herein described for the sum of ----- dollars. (In case the claim has been assigned, add the words "and ----- is assignee of said claim", or claims, if several are united.)

-----, Claimant.

(Address, city, and state of claimant)

STATE OF WASHINGTON, COUNTY OF -----, ss.

-----, being sworn, says: I am the claimant (or attorney of the claimant, or administrator, representative or agent of trustees of an employee benefit plan) above named; I have heard the foregoing claim read and know the contents thereof, and believe the same to be just.

Subscribed and sworn to before me this ----- day of -----

Any number of claimants may join in the same claim for the purpose of filing the same and enforcing their liens, but in such case the amount claimed by each original lienor, respectively, shall be stated: *Provided*, It shall not be necessary to insert in the notice of claim of lien provided for by this chapter any itemized statement or bill of particulars of such claim. [1975 c 34 § 6; 1971 ex.s. c 94 § 1; 1959 c 279 § 5; 1949 c 217 § 1(5a); 1893 c 24 § 5; Rem. Supp. 1949 § 1134. FORMER PARTS OF SECTION: (i) 1949 c 217 § 1(5b) now codified as RCW 60.04.064. (ii) 1949 c 217 § 1(5c) now codified as RCW 60.04.067.]

Effective date—1971 ex.s. c 94: "This 1971 amendatory act shall take effect on January 1, 1972." [1971 ex.s. c 94 § 4.]

60.04.064 Owner may record notice to lien claimants.

The owner may within ten days after there has been a cessation of the performance of such labor, the furnishing of such material, or the supplying of such equipment thereon for a period of thirty days, file for record in the office of the county auditor, in the county where the property is situated, a notice setting forth the date on which cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment occurred together with his name, address and the nature of his title, a legal description of the property and a statement that a copy of this notice was delivered or mailed to the general contractor, if any. The notice must be verified by the owner or by some person in his behalf. Where the ownership of the property is in several persons any one or more of the several owners may execute and file such notice, but the notice must state the names, addresses and nature of title of all of such owners. Such notice shall be conclusive evidence of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment on or before the date of cessation as stated in said notice, unless controverted by claimant's claim of lien which must be recorded within sixty days from the date of recording of such notice by the owner. This provision shall not extend the time for filing lien claims as provided by RCW 60.04.060. [1959 c 279 § 6; 1949 c 217 § 1(5b); Rem. Supp. 1949 § 1134-1. Formerly RCW 60.04.060, part.]

60.04.067 Separate residential units—When time for filing lien claims commences to run—Definition.

Where such labor is performed, such contributions owed to any type of employee benefit plan, such materials are furnished, or such equipment is supplied in the construction of two or more separate residential units the

time for filing claims of lien against each separate residential unit shall commence to run upon the cessation of the performance of such labor, the date contributions to any type of employee benefit plan became due, the furnishing of such materials, or the supplying of such equipment on each such residential unit as provided in this chapter. A separate residential unit is defined as consisting of one residential structure together with any garages or other outbuildings appurtenant thereto. [1975 c 34 § 7; 1959 c 279 § 7; 1949 c 217 § 1(5c); Rem. Supp. 1949 § 1134-2. Formerly RCW 60.04.060, part.]

Separate properties, claim: RCW 60.04.090.

60.04.070 Recording. The county auditor must record the claims and notices mentioned in this chapter in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1949 c 217 § 2; 1893 c 24 § 6; RRS § 1135. Prior: Code 1881 § 1963; 1877 p 21 § 25.]

60.04.080 Assignability. Any lien or right of lien created by law and the right of action to recover therefor, shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made if such assignment had not been made. [1893 c 24 § 7; RRS § 1136.]

60.04.090 Claims must designate amount due on property charged. In every case in which one claim is filed against two or more separate pieces of property owned by the same person, or owned by two or more persons who jointly contracted for the labor, material, or equipment for which the lien is claimed, the person filing such claim must designate in the claim the amount due him on each piece of property, otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon either of such pieces of property. [1959 c 279 § 8; 1893 c 24 § 8; RRS § 1137. Prior: Code 1881 § 1962; 1877 p 221 § 24.]

Filing claim against separate residential units: RCW 60.04.067.

60.04.100 Duration of lien—Limitation of action—When action commenced. No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim has been filed unless an action be commenced in the proper court within that time to enforce such lien; or, if credit be given and the terms thereof be stated in the claim of lien, then eight calendar months after the expiration of such credit; and in case such action be not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the same for want of prosecution, and the dismissal of such action or a judgment rendered therein, that no lien exists, shall constitute a cancellation of the lien: *Provided, That, for the purposes of this chapter, an action to enforce such lien shall not be timely commenced*

unless the filing of summons and complaint in a court of competent jurisdiction shall be made prior to the expiration of the eight month period, and service of the summons and complaint shall be made upon all necessary parties personally, or by commencement of service by publication, not later than ninety days after the filing of the summons and complaint. [1975 1st ex.s. c 231 § 1; 1943 c 209 § 1; 1893 c 24 § 9; RRS § 1138. Prior: 1881 § 1964; 1877 p 221 § 26; 1873 p 443 § 6; 1863 p 410 § 4; 1860 p 286 § 4; 1854 p 392 § 4.]

60.04.110 Extent of contractor's right to recover—Settlements—Rights of owner. The contractor shall be entitled to recover upon the claim filed by him only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for labor performed, for contributions owed to any type of employee benefit plan, materials furnished, and equipment supplied; and in all cases where a claim shall be filed under this chapter for labor performed, contributions owed to any type of employee benefit plan, materials furnished, or equipment supplied to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which the claim is filed; and in case of judgment against the owner or his property, upon the lien, the owner shall be entitled to deduct from any amount due or to become due by him to the contractor, the amount of the judgment and costs, and if the amount of such judgment and costs shall exceed the amount due by him to the contractor or if the owner shall have settled with the contractors in full, he shall be entitled to recover back from the contractor the amount, including costs for which the lien is established in excess of any sum that may remain due from him to the contractor. [1975 c 34 § 8; 1959 c 279 § 9; 1893 c 24 § 10; RRS § 1139. Prior: Code 1881 § 1966 ; 1877 p 221 § 28.]

60.04.120 Foreclosure—Parties. The liens provided by this chapter, for which claims have been filed, may be foreclosed and enforced by a civil action in the court having jurisdiction; in any action brought to foreclose a lien, all persons who, prior to the commencement of such action, have legally filed claims of liens against the same property, or any part thereof shall be joined as parties, either plaintiff or defendant; and no person shall begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to such prior action, he may apply to the court to be joined as a party thereto, and his lien may be foreclosed in such action; and no action to foreclose a lien shall be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien. [1893 c 24 § 11; RRS § 1140. Prior: Code 1881 § 1968; 1877 p 222 § 30; 1873 p 443 §§ 6, 7; 1863 pp 410, 411 §§ 4, 5; 1863 p 286 §§ 4, 5; 1854 pp 392, 393 §§ 4, 5.]

60.04.130 Rank of lien—Application of proceeds—Attorney's fees. In every case in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

- (1) All persons performing labor.
- (2) Contributions owed to employee benefit plans.
- (3) All persons furnishing material or supplying equipment.
- (4) The subcontractors.
- (5) The original contractors.

The proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow to the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the superior court, court of appeals, and supreme court. [1975 c 34 § 9; 1971 c 81 § 129; 1969 c 38 § 1; 1959 c 279 § 10; 1893 c 24 § 12; RRS § 1141. Prior: Code 1881 § 1967; 1877 p 222 § 29; 1873 p 443 § 8; 1863 p 420 § 6; 1860 p 287 § 6; 1854 p 393 § 6.]

60.04.140 Lien not discharged by taking note. The taking of a promissory note or other evidence of indebtedness for any labor performed, material furnished, or equipment supplied for which lien is created by law, shall not discharge the lien therefor, unless expressly received as payment and so specified therein. [1959 c 279 § 11; 1893 c 24 § 14; RRS § 1143.]

60.04.150 Material exempt from process—Exception. Whenever material shall have been furnished for use in the construction, alteration or repair of property subject to a lien created by this chapter, such material shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such material, except a debt due for the purchase money thereof, so long as in good faith the said material is about to be applied in the construction, alteration or repair of such property. [1893 c 24 § 15; RRS § 1144. Prior: Code 1881 § 1969; 1877 p 222 § 31.]

60.04.160 Effect of filing claim on community interest. The claim of lien, when filed as required by this chapter, shall be notice to the husband or wife of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both husband and wife to said lien. [1893 c 24 § 16; RRS § 1145.]

60.04.170 When land not subject to lien—Power of court to order removal and sale of property. When, for any reason the title or interest in the land, upon which the property subject to the lien is situated cannot be subjected to the lien, the court may order the sale and removal from the land of the property subject to the lien to satisfy the lien. [1893 c 24 § 17; RRS § 1146.]

60.04.180 Personal action preserved. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for labor performed, material furnished, or equipment supplied to maintain a personal action to recover such debt against the person liable therefor. [1959 c 279 § 12; 1893 c 24 § 13; RRS § 1142. Prior: Code 1881 § 1970; 1877 p 223 § 32.]

60.04.190 Destruction or concealment of property—Removal from premises—Penalty. See RCW 61.12.030, 9.45.060.

60.04.200 Interim or construction financing—Definitions. As used in this chapter, the following meanings shall apply:

- (1) "Lender" means any person or entity regularly providing interim or construction financing.
- (2) "Interim or construction financing" means that portion of money secured by mortgage, deed of trust, or other encumbrance to finance construction of improvements on, or development of, real property, but does not include:
 - (a) Funds to acquire real property;
 - (b) Funds to pay interest, insurance premiums, lease deposits, taxes, assessments, or prior encumbrances;
 - (c) Funds to pay loan, commitment, title, legal, closing, recording or appraisal fees;
 - (d) Funds to pay other customary fees; which pursuant to agreement with the owner or borrower are to be paid by the lender from time to time;
 - (e) Funds to acquire personal property for which the potential lien claimant may not claim a lien pursuant to chapter 60.04 RCW.
- (3) "Owner" means the record holder of the legal or beneficial title to the real property to be improved or developed.
- (4) "Potential lien claimant" means any person or entity entitled to assert lien rights pursuant to this chapter and has otherwise complied with the provisions of this chapter and the requirements of chapter 18.27 RCW if required by the provisions thereof.
- (5) "Draws" means periodic disbursements of interim or construction financing by a lender. [1973 1st ex.s. c 47 § 1.]

Severability—1973 1st ex.s. c 47: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 47 § 4.] This applies to RCW 60.04.200–60.04.220.

60.04.210 Interim or construction financing—Notice of lien—Duty of lender to withhold from disbursements—Liabilities of lender and lien claimant. Any lender providing interim or construction financing where

there is not a payment bond of at least fifty percent of the amount of construction financing shall observe the following procedures:

(1) Draws against construction financing shall be made only after certification of job progress by the general contractor and the owner or his agent in such form as may be prescribed by the lender.

(2) Any potential lien claimant who has not received a payment within twenty days after the date required by his contract, employee benefit plan agreement, or purchase order may within twenty days thereafter file a notice as provided herein of the sums due and to become due, for which a potential lien claimant may claim a lien under chapter 60.04 RCW.

(3) The notice must be filed in writing with the lender at the office administering the interim or construction financing, with a copy furnished to the owner and appropriate general contractor. The notice shall state in substance and effect that such person, firm, trustee, or corporation is entitled to receive contributions to any type of employee benefit plan, has furnished labor, materials and supplies, or supplied equipment for which right of lien is given by this chapter, with the name of the general contractor, agent or person ordering the same, a common or street address of the real property being improved or developed, or if there be none the legal description of said real property, description of the labor, or material furnished, or equipment leased, or a brief statement describing the nature of the contributions owed to any type of employee benefit plan, the name, business address and telephone number of said lien claimant which notice shall be given by mailing the same by registered or certified mail, return receipt requested.

(4) After the receipt of such notice, the lender shall withhold from the next and subsequent draws such percentage thereof as is equal to that percentage of completion as certified in subsection (1) of this section, which is attributable to the potential lien claimant as of the date of the certification of job progress for the draw in question less contracted retainage. The percentage of completion attributable to the lien claimant shall be calculated from said certification of job progress, and shall be reduced to reflect any sums paid to or withheld for the potential lien claimant. Alternatively, the lender may obtain from the general contractor or borrower a payment bond for the benefit of the potential lien claimant in such sum.

(5) Sums so withheld shall not be disbursed by the lender except by the written agreement of the potential lien claimant, owner and general contractor in such form as may be prescribed by the lender, or the order of a court of competent jurisdiction.

(6) In the event a lender fails to abide by the provisions of subsections (4) or (5) of this section, then the mortgage, deed of trust or other encumbrance securing the lender will be subordinated to the lien of the potential lien claimant to the extent of the interim or construction financing wrongfully disbursed, but in no event in an amount greater than the sums ultimately determined to be due the potential lien claimant by a court of

competent jurisdiction, or more than the sum stated in the notice, whichever is less.

(7) Any potential lien claimant shall be liable for any loss, cost or expense, including reasonable attorney fees, to the party injured thereby arising out of any unjust, excessive or premature notice of claim. [1975 c 34 § 10; 1973 1st ex.s. c 47 § 2.]

60.04.220 Interim or construction financing—Priorities. Except as provided in RCW 60.04.050 or in RCW 60.04.200 through 60.04.220 any mortgage or deed of trust shall be prior to all liens, mortgages, deeds of trust and other encumbrances which have not been recorded prior to the recording of such mortgage or deed of trust to the extent of all sums secured by such mortgage or deed of trust regardless of when the same are disbursed or whether such disbursements are obligatory. [1973 1st ex.s. c 47 § 3.]

**Chapter 60.08
CHATEL LIENS**

Sections

60.08.010	Lien authorized.
60.08.020	Notice of lien—Contents—Form.
60.08.030	Priority of lien.
60.08.040	Enforcement of lien—Limitation of action.
60.08.050	Rank of lien—Personal judgment—Deficiency—Costs.
60.08.060	Filing notice of liens.

60.08.010 Lien authorized. Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: *Provided, however,* That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien. [1917 c 68 § 1; 1909 c 166 § 1; 1905 c 72 § 1; RRS § 1154.]

60.08.020 Notice of lien—Contents—Form. In order to make such lien effectual the lien claimant shall, within sixty days from the date of delivery of such chattel to the owner, file in the office of the auditor of the county in which such chattel is kept, a lien notice, which notice shall state the name of the claimant, the name of the owner, a description of the chattel upon which the claimant has performed labor or furnished material, the amount for which a lien is claimed and the date upon which such expenditure of labor or material was completed, which notice shall be signed by the claimant or someone on his behalf, and may be in substantially the following form:

CHATTEL LIEN NOTICE.

----- Claimant,
 against
 ----- Owner.

Notice is hereby given that ----- has and claims a lien upon (here insert description of chattel), owned by ----- for the sum of ----- dollars, for and on account of labor, skill and material expended upon said ----- which was completed upon the ----- day of -----, 19--

 Claimant.

[1917 c 68 § 2; 1905 c 72 § 2; RRS § 1155.]

60.08.030 Priority of lien. The liens created by this chapter are preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of the commencement of the performance of the labor, or the furnishing of the materials for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant has no notice. [1917 c 68 § 3; 1905 c 72 § 3; RRS § 1156.]

60.08.040 Enforcement of lien—Limitation of action. The lien herein provided for may be enforced against all persons having a junior or subsequent interest in any such chattel, by judicial procedure or by summary procedure as set forth in chapter 60.10 RCW and RCW 61.12.162 within nine months after the filing of such lien notice, and if no such action shall be commenced within such time such lien shall cease. [1969 c 82 § 11; 1917 c 68 § 4; 1905 c 72 § 4; RRS § 1157.]

Secured transactions: Article 62A.9 RCW.

60.08.050 Rank of lien—Personal judgment—Deficiency—Costs. In every case originating in or removed to a court of competent jurisdiction, in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

- (1) All persons performing labor;
- (2) All persons furnishing material;

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the

costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the action. [1917 c 68 § 5; RRS § 1157a.]

60.08.060 Filing notice of liens. Upon presentation of such lien notice to the auditor of any county, and the payment to him of fifteen cents, he shall file the same, and endorse thereon the time of the reception, the number thereof, and shall enter the same in a suitable book or file (but need not record the same). Such book or file shall have herewith an alphabetic index, in which the county auditor shall index such notice by noting the name of the owner, name of lien claimant, description of property, date of lien (which shall be the date upon which such expenditure of labor, skill or material was completed), date of filing and when released, the date of release. [1905 c 72 § 5; RRS § 1158.]

**Chapter 60.10
 PERSONAL PROPERTY LIENS—SUMMARY
 FORECLOSURE**

Sections	
60.10.010	Definitions.
60.10.020	Methods of foreclosure.
60.10.030	Notice and sale—Priorities—Sale procedure— Surplus—Deficiency.
60.10.040	Rights and interest of purchaser for value.
60.10.050	Redemption.
60.10.060	Noncompliance with chapter—Rights of lien debtor.
60.10.070	"Commercially reasonable".

60.10.010 Definitions. As used in this chapter:

(1) The term "lien debtor" means the person who is obligated, owes payment or other performance. Where the lien debtor and the owner of the collateral are not the same person, the term "lien debtor" means the owner of the collateral.

(2) "Collateral" means the property subject to a statutory lien.

(3) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest.

(4) "Secured party" has the same meaning as used in Article 9 of the Uniform Commercial Code (Title 62A RCW). [1969 c 82 § 2.]

Judicial foreclosure of personal property liens: RCW 61.12.162.

60.10.020 Methods of foreclosure. Any lien upon personal property, excluded by RCW 62A.9–104 from the provisions of the Uniform Commercial Code (Title 62A RCW), may be foreclosed by an action in the superior court having jurisdiction in the county in which the property is situated in accordance with RCW 61.12.162, or it may be foreclosed by summary procedure as provided in this chapter. [1969 c 82 § 3.]

60.10.030 Notice and sale—Priorities—Sale procedure—Surplus—Deficiency. (1) A lien foreclosure authorized by RCW 60.10.020 may be summarily foreclosed by notice and sale as provided herein. The

lien holder may sell, or otherwise dispose of the collateral in its then condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the lien under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the lien holder, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the lien holder need not comply with his demand.

(2) The lien holder must account to the lien debtor for any surplus, and, unless otherwise agreed, the lien debtor is not liable for any deficiency.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable which shall be construed as provided in RCW 60.10.070. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the lien holder to the lien debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the lien debtor in this state or who is known by the lien holder to have a security interest in the collateral. The lien holder may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale. [1969 c 82 § 4.]

60.10.040 Rights and interest of purchaser for value. When a lien is foreclosed in accordance with the provisions of RCW 61.12.162 and this chapter, the disposition transfers to a purchaser for value all of the lien debtor's rights therein, discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the lien holder fails to comply with the requirements of this chapter or of any judicial proceedings under RCW 61.12.162:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the lien holder, other bidders or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith. [1969 c 82 § 5.]

60.10.050 Redemption. At any time before the lien holder has disposed of collateral or entered into a contract for its disposition under RCW 61.12.162 and this chapter, the lien debtor or any other secured party may redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the lien holder, holding and preparing the collateral for disposition, in arranging for the sale, and his reasonable attorneys' fees and legal expenses. [1969 c 82 § 6.]

60.10.060 Noncompliance with chapter—Rights of lien debtor. If it is established that the lien holder is not proceeding in accordance with the provisions of this chapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the lien debtor or any person entitled to notification or whose security interest has been made known to the lien holder prior to the disposition has a right to recover from the lien holder any loss caused by a failure to comply with the provisions of this chapter. The lien debtor has a right to recover in any event an amount not less than ten percent of the original lien claimed. [1969 c 82 § 7.]

60.10.070 "Commercially reasonable". As used in this chapter, "commercially reasonable" shall be construed in a manner consistent with the following:

The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the lien holder is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the lien holder either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [1969 c 82 § 8.]

Chapter 60.12

LABOR, LANDLORD AND SEED LIENS ON FARM CROPS

Sections

60.12.010	Labor lien authorized—Exceptions.
60.12.020	Landlord's lien authorized.
60.12.030	Rank and priority of lien—Assignment.
60.12.040	Notice of labor or landlord's lien—Filing—Requirements—Recorded leases—Damage claim.
60.12.060	Laborer's or landlord's claim—Contents—Amendments.
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60.12.080	Duration of lien—Limitation of action.
60.12.090	Foreclosure—Parties.
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60.12.120	Errors in claim, effect of.
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60.12.190	Seed liens—Filing notice of claim.
60.12.200	Seed liens—Contents of claim.
60.12.210	Seed liens—Existing rights preserved.

60.12.010 Labor lien authorized—Exceptions. Any person, who, as laborer, contractor or otherwise, shall, at the request of the owner, or the tenant, of any farm or land, do or cause to be done any work or labor upon any such farm or land, in tilling the same, or any part thereof, or in preparing the same or any part thereof for the growing of crops, or in sowing or planting any crop on the same, or in cultivating any crop growing thereon, or in cutting, digging, picking, pulling or otherwise harvesting any crop grown thereon, or in gathering, securing, or housing any crop grown thereon, or in threshing any grain grown thereon, or in hauling to any warehouse any crop or grain grown thereon, shall have a lien upon any and all of the crops grown, during the calendar year in which such work or labor was done, upon all or any of the land belonging to or occupied by the person, firm or corporation at whose request the work or labor was done, for the contract price, or reasonable value, of such work and labor, and any person, who, as laborer, contractor or otherwise, shall, in any calendar year, at the request of the owner or tenant, of any farm or land, do or cause to be done any work or labor upon any such farm or land, in preparing the same, or any part thereof, for the sowing, planting or growing of any crop, or in sowing or planting any crop thereon, to be grown and harvested in the following calendar year, shall have a lien on the crop so grown or harvested, for the contract price, or reasonable value, of such work or labor: *Provided*, That no lien on the crop grown on any orchard shall be allowed, under the provisions of this section, for work or labor done on such orchard or orchard lands, in pruning, spraying, cultivating, picking, gathering, sorting, housing or otherwise caring for, harvesting or securing, preparing for market or in delivering said crop, and nothing in this chapter shall be construed as repealing, amending or modifying any of the provisions of chapter 60.16 RCW: *And provided further*, That the interest of any lessor in any portion of the crop raised on demised premises leased in consideration of a share of the crop raised, shall not be subject to the lien provided for in this section, where the work or labor is done at the request of the tenant: *And provided further*, That the lien for hauling shall attach only to the crop or grain actually hauled by the claimant. [1933 c 32 § 1; 1927 c 256 § 1; RRS § 1188-1. Prior: 1891 c 75 § 1; 1886 p 114 § 1; Code 1881 § 1975; 1879 p 150 § 1.]

60.12.020 Landlord's lien authorized. Every landlord shall have a lien upon the crops growing or grown upon demised premises in any year, for the faithful performance of the terms of the lease, and for the rent accruing or accrued for such year, whether such rent is to be paid wholly, or in part, in money, or in specific articles of property, or in the products of the premises, or in labor. [1927 c 256 § 2; RRS § 1188-2.]

60.12.030 Rank and priority of lien—Assignment. The liens provided for in this chapter shall be preferred to any other encumbrance upon the crops to which they attach. The seed lien provided for in this chapter shall be superior to any lien except a labor lien. Such a lien or right of lien and the right of action therefor shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made if the assignment had not been made. [1955 c 336 § 2; 1927 c 256 § 3; RRS § 1188-3. Prior: Code 1881 § 1976; 1879 p 150 § 2.]

60.12.040 Notice of labor or landlord's lien—Filing—Requisites—Recorded leases—Damage claim. Every person claiming a lien, under the provisions of this chapter for work and labor done, must within twenty days, after the cessation of the work or labor for which the lien is claimed, file for record, in the office of the county auditor of the county in which the crop or crops upon which the lien is claimed are growing or were grown, a claim of lien, subscribed and verified under oath by the claimant, or someone in his behalf, to the effect that the affiant believes the claim to be just.

In case the lease under which the landlord claims a lien for rent has been recorded in the office of the county auditor of the county where the demised premises are situated, such recording shall constitute notice of claim of lien for rent during the first three years of the leasehold period, but any claim for damages, by a landlord, for failure of faithful performance of the lease must be recorded within the time, and in the manner hereinabove in this section provided.

Every landlord claiming a lien upon the crop or crops growing or grown upon the demised premises in any year, under the provisions of this chapter, for rent or the faithful performance of an unrecorded lease must, on or before the first day of June in such year, file for record, in the office of the county auditor of the county in which the crop or crops upon which the lien is to be claimed are growing or were grown, a claim of lien, subscribed and verified under oath by the claimant, or someone in his behalf, to the effect that the affiant believes the claim to be just. [1933 c 119 § 1; 1927 c 256 § 4; RRS § 1188-4. Prior: 1919 c 176 § 1; 1888 p 130 § 1; 1886 p 115 § 2; Code 1881 § 1977; 1879 p 150 § 3. Formerly RCW 60.12.050, part.]

Seed liens—Filing notice of claim: RCW 60.12.190.

60.12.060 Laborer's or landlord's claim—Contents—Amendments. The verified claim of lien, provided for in RCW 60.12.040, must state the name of the claimant, and in case the claim has been assigned, the name of the assignee, the demand of the claimant and

the amount thereof, after deducting all just credits and offsets, the name of the person, firm or corporation, by whom the claimant was employed, and whether the owner or tenant of the land upon which the crop upon which the lien is claimed is growing or was grown, the contract price of employment, if any, or in case there was no express contract, the reasonable worth of the work and labor performed, the kind and amount thereof, and the dates of beginning and completing the same, and must contain a description of the land upon which the work and labor was performed, a description of the crop to be charged with the lien, sufficient for identification with reasonable certainty, giving the kind of crop, a description of the land upon which the crop is growing or was grown, and, if the crop has been harvested, the amount of the crop, as near as may be, and a description of the containers and the number thereof, if any: *Provided*, That if the lien is claimed for preparing the ground for, or planting or sowing a crop to be harvested in the following calendar year, a description of the land upon which the crop is to be, or is planted or sown, and the nature of the crop, shall be sufficient. In case a lien is claimed for rent, or for damages for failure of faithful performance of the lease, the verified claim, if any is filed, shall contain a description of the demised premises, and state the terms and conditions of the lease, and the amount of the rent due or to become due, or, the nature of the failure of performance, and the amount of damages claimed, and a sufficient description of the crop upon which the lien is claimed as above provided. Any such claim of lien may be amended, in case action is brought to foreclose the same, by order of court, as pleadings may be amended: *Provided*, That the interest of third parties shall not be affected by any such amendment. [1927 c 256 § 5; RRS § 1188-5.]

60.12.070 Filing and indexing claims—Fees. Every such instrument shall be filed in the office of the county auditor who shall index the same in a book kept for that purpose as chattel mortgages are required by law to be indexed, and for which he shall receive the same fees as are required by law for filing and indexing chattel mortgages. [1933 c 32 § 2; 1927 c 256 § 6; RRS § 1188-6.]

Filing and indexing chattel mortgages: RCW 62A.9-403(4), (5).

60.12.080 Duration of lien—Limitation of action. No lien shall bind a crop for a longer period than eight calendar months after the claim was filed, unless an action is commenced within that time to enforce it: *Provided*, That if the claim of lien is upon a crop to be grown and harvested in the following calendar year, after the work of preparing the ground or planting or sowing the crop is done, the lien shall bind the crop for a period of twelve calendar months after the claim was filed, if an action is commenced within that time to enforce it: *Provided further*, That a lien for seed shall not expire until six months after the crop from said seed has been harvested or until after two years from filing, whichever is the shorter time: *Provided further*, That if an action to enforce a lien is nonsuited or dismissed for any cause other than the merits, the lien shall continue for an additional month, to permit the commencement of

another action thereon. If action to enforce a lien is not prosecuted to judgment within two years after its commencement, the court may dismiss it for want of prosecution, and the dismissal or judgment that no lien exists, shall constitute a cancellation of the lien. [1955 c 336 § 5; 1927 c 256 § 7; RRS § 1188-7.]

60.12.090 Foreclosure—Parties. Any lien provided by this chapter, for which a claim has been filed, may be foreclosed and enforced by a civil action, in the superior court of the county wherein the lien was filed, and all laws and proceedings to secure property so as to hold it for the satisfaction of any lien which may be against it, shall apply to actions for the foreclosure of liens provided for in this chapter. In any such action brought to foreclose a lien, all persons who, prior to the commencement of such action, have legally filed claims for liens against the same property, or any part thereof, shall be joined as parties, either plaintiff or defendant, and no person shall begin an action to foreclose a lien, upon any property, while a prior action, begun to foreclose another lien on the same property, is pending, but if not made a party plaintiff or defendant in such prior action, he may apply to the court to be joined as a party thereto, and his lien may be foreclosed in such action, and no action to foreclose a lien provided for in this chapter, shall be dismissed at the instance of an applicant therein, to the prejudice of any other party to the suit who claims a lien. [1927 c 256 § 8; RRS § 1188-8.]

60.12.100 Sheriff as receiver—Notice—Fees—Deposit for possession—Demand before suit. The sheriff of the county wherein any action is brought under the provisions of this chapter shall be the receiver when any is appointed, and the superior court, upon a sufficient showing made, shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees are collected by him in his official capacity: *Provided*, That when any property is in the custody of such sheriff, under the provisions of this section, any person claiming any interest therein, may deposit with the clerk of the court wherein such action is pending, a sum of money in an amount equal to the claim or claims sued upon, together with one hundred dollars, or such sum as may be fixed by the court in which such action is pending, to cover costs and interest, and shall have the right to demand and receive forthwith from such sheriff, the possession and custody of such property: *Provided further*, That in no action brought under the provisions of this chapter shall costs be allowed to any lien claimant, unless a demand has been made for payment of his claim before the commencement of the suit, unless the court shall find that the claimant at the time of bringing action, had reasonable ground to believe that the owner or person having control of the property upon which such lien is claimed, was attempting to elude, injure, destroy, or render difficult, uncertain or impossible of identification, the property upon which the lien is claimed, or otherwise prevent the collection of the claim. [1927 c 256 § 9; RRS § 1188-9.]

60.12.110 Pleadings by defendants—Amendments. If the defendant or defendants appear in the suit to enforce any lien provided by this chapter, he or they shall make their answer on the merits of the complaint, and any motion or demurrer against said complaint must be filed with the answer, and no motion shall be allowed to make the complaint more definite and certain, if it appear to the court that the defendant or defendants have or should have knowledge of the facts, or that it can be made more definite and certain by facts which will necessarily appear in the testimony, but the case, unless the court sustains the demurrer to the complaint, shall be heard on the merits as speedily as possible, and amendments to the pleadings and notice of claim of lien, if necessary, shall be liberally allowed. [1927 c 256 § 10; RRS § 1188-10.]

60.12.120 Errors in claim, effect of. No mistake or error in the claim of lien filed, shall invalidate the lien, unless the court finds that such mistake or error was made with intent to defraud, or the court shall find that an innocent third party, without notice, direct or constructive, has, since the claim was filed, become a bona fide owner of the property against which the claim of lien was filed, and that the notice of claim of lien was so deficient that it did not put such third party upon further inquiry in any manner. [1927 c 256 § 11; RRS § 1188-11.]

60.12.130 Purchase of property subject to lien—Presumption of notice. It shall be conclusively presumed by the court, in any action brought under the provisions of this chapter, that any one purchasing property subject to any lien under the provisions of this chapter, within the period given herein to claimants within which to file their liens, is not an innocent third party, and that he has not become a bona fide owner of the property, so purchased, unless it shall appear that he has paid full value for such property, and has required the purchase money of said property to be applied to the payment of such bona fide claimants as are entitled to liens upon said property under the provisions of this chapter. [1933 c 119 § 2; 1927 c 256 § 12; RRS § 1188-12.]

60.12.140 Judgment—Costs—Disposition of proceeds. In any action brought under the provisions of this chapter, judgment must be rendered in favor of each person establishing a lien for the amount due him with costs, and the court shall allow, as a part of the costs, the moneys paid for making, filing and recording the claim of lien, and a reasonable attorney's fee for each person establishing a lien, and the court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court shall apportion the proceeds of such sale to the payment of the several judgments rendered in the action, pro rata, according to the amounts of such judgments, and if any balance remain of such proceeds after the payment of such judgment, shall direct the payment of the same to the owner of the property sold. [1927 c 256 § 13; RRS § 1188-13.]

60.12.150 Sale before judgment—Deposit of proceeds. In any action begun under the provisions of this chapter, the court, upon a sufficient showing being made, may order any property upon which a lien is claimed under the provisions of this chapter, to be sold by the sheriff as personal property is sold on execution, before judgment is rendered, and that the proceeds of such sale shall be paid into court, to be applied as may be provided for by the judgment. [1927 c 256 § 14; RRS § 1188-14.]

60.12.160 Concealment or injury to crops under lien—Damages. Any person who shall eloin, injure, or destroy, or who shall render difficult, uncertain or impossible of identification, any crop or crops upon which there is a lien, as provided for in this chapter, without the express consent of the lien holder, shall be liable to the lien holder for damages, to the amount secured by his lien, and the facts being shown to the court in the civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount of such damages and costs, against said person, if he be a party to said action, or such damages may be recovered in a civil action against such person. [1927 c 256 § 15; RRS § 1188-15.]

Removal or destruction of property subject to lien, penalty: RCW 61.12.030, 9.45.060.

60.12.170 Personal action preserved. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for labor performed, or for rent or damages, under the provisions of this and preceding sections, to maintain a personal action to recover such debt against the person liable therefor. [1927 c 256 § 16; RRS § 1188-16.]

60.12.180 Seed liens. Every person who, at the written request of the owner of real property, his agent, or tenant, furnishes seed for growing crops upon such real property shall have a lien for the agreed price or the reasonable value thereof upon any or all crops grown from such seed. [1959 c 226 § 1; 1955 c 336 § 1.]

60.12.190 Seed liens—Filing notice of claim. A person claiming a seed lien shall, within sixty days after delivering the seed to the owner purchasing the seed, or his agent, file in the manner required for filing chattel mortgages a claim of lien subscribed and verified by the claimant or someone on his behalf, to the effect that affiant believes the claim to be just. Such filing shall be with the county auditor of the county in which the real property is situated and the crop is to be grown or is growing. The county auditor shall file and index the claims of lien on the crop in a book kept for that purpose and for the same fee as required for chattel mortgages. [1955 c 336 § 3.]

60.12.200 Seed liens—Contents of claim. The claim of lien for seed shall state the name of the claimant; if the claim has been filed, the name of the assignee; the demand of the claimant and the amount thereof, after deducting all just credits and offsets; the contract

price or reasonable value of the seed sold; the kind and amount thereof; the date of delivery of the seed; the description of the land and the crop to be charged, giving the kind of crop, a description of the land upon which the crop is to be planted or is growing. [1955 c 336 § 4.]

60.12.210 Seed liens—Existing rights preserved. Nothing contained in RCW 60.12.030, 60.12.080, and 60.12.180 through 60.12.210 shall affect or lessen any existing rights. [1955 c 336 § 6.]

Chapter 60.14

LIEN FOR AGRICULTURAL DUSTING OR SPRAYING

Sections

60.14.010	Liens authorized.
60.14.020	Claim of lien—Filing—Contents— Foreclosure.
60.14.030	Limitation of action to foreclose—Costs.

60.14.010 Liens authorized. Any person, firm, corporation or copartnership who shall under contract, perform labor or services, or furnish materials in crop dusting or spraying crops or lands for the purpose of weed, disease, or insect control or for promoting the growth of such crops, shall have a lien upon all such crops so crop dusted or sprayed, for and on account of the labor or services performed and material furnished. [1955 c 217 § 1.]

60.14.020 Claim of lien—Filing—Contents—Foreclosure. Such lien claimant must within thirty days after the completion of harvest of crops sprayed or dusted, file for recording with the auditor of the county in which the crops or part thereof are raised, a claim of lien which shall be in substance in accordance with the provisions governing mechanics' liens in chapter 60.04 RCW, and foreclosed in the same manner as such liens, and such lien shall attach as of the date of such filing. [1955 c 217 § 2.]

60.14.030 Limitation of action to foreclose—Costs. An action to foreclose such lien shall be brought within eight calendar months after filing the claim for lien, and the court shall allow as part of the costs, the money paid for making, filing, or recording the claim and reasonable attorney's fee. [1955 c 217 § 3.]

Chapter 60.16

LABOR LIENS ON ORCHARDS AND ORCHARD LANDS

Sections

60.16.010	Liens authorized.
60.16.020	Notice of lien—Filing—Contents— Foreclosure.
60.16.030	Limitation of action to foreclose—Costs.

60.16.010 Liens authorized. Any person or corporation who shall do or cause to be done any labor upon any

orchard or orchard lands, in pruning, spraying, cultivating and caring for the same, at the request of the owner thereof, or his agent, shall have a lien upon such orchard and orchard lands for such work and labor so performed. [1917 c 110 § 1; RRS § 1131-1.]

60.16.020 Notice of lien—Filing—Contents—Foreclosure. Any person or corporation claiming the benefit of this chapter, must within forty days after the close of such work or labor for each season during which such work and labor is done, file for record with the county auditor of the county in which said work and labor was performed and in which said land or part thereof is situated, a claim of lien which shall be in substance in accordance with the provisions of RCW 60.04-.060, so far as the same is applicable, which said claim of lien shall be verified as in said section provided, and such lien may be enforced in a civil action in the same manner as near as may be, as provided in RCW 60.04-.120. [1917 c 110 § 2; RRS § 1131-2.]

60.16.030 Limitation of action to foreclose—Costs. Any action to foreclose such claim of lien shall be brought within eight calendar months after the filing of such claim for lien as provided in RCW 60.16.020 and in any such action brought to enforce such lien, the court shall allow as part of the costs the money paid for making, filing and recording such claim of lien and a reasonable attorney's fee. [1917 c 110 § 3; RRS § 1131-3.]

Chapter 60.20

LABOR AND MATERIAL LIENS FOR IMPROVING PROPERTY WITH NURSERY STOCK

Sections

60.20.010	Liens authorized.
60.20.020	Priority over encumbrances.
60.20.030	Claim of lien—Contents—Joint claims.
60.20.040	Recording and indexing liens.
60.20.050	Rank and priority of liens.
60.20.060	Foreclosure—Costs.

60.20.010 Liens authorized. Every person who, at the request of the owner of any real property, or at the request of the duly authorized agent of such owner, performs any labor or furnishes any material, or both, in the planting of trees, vines, shrubs, plants, hedges or lawns for the improvement of such real property, shall have a lien for the agreed price thereof, or if no agreed price, then for the reasonable value of such work and materials, upon the real property upon which such improvements are placed, and such further amount of land belonging to such owner as is necessary to the convenient use and enjoyment of such improvement. [1943 c 18 § 1; Rem. Supp. 1943 § 1148-1.]

60.20.020 Priority over encumbrances. The lien created by this chapter shall be preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of commencement of the performance of the labor, or the furnishing of the materials for which such lien is given, and are also preferred to

any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant had no notice. [1943 c 18 § 2; Rem. Supp. 1943 § 1148-2.]

60.20.030 Claim of lien—Contents—Joint claims. The person or corporation claiming a lien shall, within ninety days after the completion of the labor or the furnishing of the materials, file for record with the auditor of the county in which the property is situated, a claim of lien, stating as nearly as may be the time of the commencement and cessation of performing the labor or furnishing the materials; the name of the claimant; the name of the person by whom the laborer was employed or to whom the material was furnished; the legal description of the property to be charged with the lien; the name of the owner, or reputed owner of the property; and the amount for which the lien is claimed, and shall be signed and verified by the claimant, or by some person in his behalf, to the effect that the affiant believes it to be just. If the claim has been assigned, the claim shall state the name of the assignee. In foreclosure suits, such claims of lien may be amended by order of the court, insofar as the interests of third parties shall not be affected thereby. Any number of claimants may join in the same claim for the purpose of filing and enforcing their liens, by stating the amount claimed by each lienor. [1955 c 239 § 1; 1943 c 18 § 3; Rem. Supp. 1943 § 1148-3.]

60.20.040 Recording and indexing liens. The county auditor of each county shall record all lien claims filed as provided in this chapter, in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1943 c 18 § 4; Rem. Supp. 1943 § 1148-4.]

60.20.050 Rank and priority of liens. Liens provided for by this chapter shall have the same priority and rank, the one with the other, and as between such lien and other encumbrances, as in the case of mechanics' and materialmen's liens. [1943 c 18 § 5; Rem. Supp. 1943 § 1148-5.]

Priority and rank of mechanics' and materialmen's liens: RCW 60.04.050, 60.04.130.

60.20.060 Foreclosure—Costs. The liens provided for by this chapter for which claims have been filed may be foreclosed and enforced by a civil action in the court having jurisdiction, in the same manner as mechanics' and materialmen's liens are now foreclosed and enforced. Any such foreclosure action shall be brought within eight calendar months after the filing of such claim of lien as provided herein, and in any such action, the court shall allow as part of the costs therein the money paid for making, filing and recording such claim of lien and a reasonable attorney's fee. [1943 c 18 § 6; Rem. Supp. 1943 § 1148-6.]

Foreclosure of mechanics' and materialmen's liens: RCW 60.04.120.

Chapter 60.22

LIEN FOR FURNISHING FERTILIZERS, PESTICIDES, WEED KILLERS

Sections

60.22.010	Liens authorized—Tenant farmers—Priority—Sale, commingling, disposal of crop.
60.22.020	Claim of lien—Filing—Procedure to foreclose—Time of attachment.
60.22.030	Time for foreclosure—Costs—Attorney's fee.

60.22.010 Liens authorized—Tenant farmers—Priority—Sale, commingling, disposal of crop. (1) Any person who furnishes commercial fertilizer, and/or pesticide, and/or weed killer to another for use on the lands owned, contracted to be purchased, used or rented by him, may have a lien upon all the crops on which the fertilizer, and/or pesticide, and/or weed killer are used to secure the payment of the purchase price thereof: *Provided*, That if the commercial fertilizer, and/or pesticide, and/or weed killer is furnished to any tenant farmer, the lien shall apply only to the tenant farmer's interest in the crops unless written consent of the owner of the premises is obtained: *Provided further*, That such lien shall be subordinate to any crop lien or crop mortgage which has been filed for record prior to the furnishing of such materials or products.

(2) If the crop, or any part thereof, is sold subsequent to the filing of the lien, or possession delivered to an agent, broker, cooperative agency or other person to be sold or otherwise disposed of and its identity lost, or the crop commingled with other property so that it cannot be segregated, and if the purchaser, agent, broker, cooperative agency or other person is notified of the filing of the lien by being served with a certified copy thereof, the lien shall attach to the proceeds of the sale of the crop or part thereof remaining in the possession of the purchaser, agent, broker, cooperative agency or other person at the time of the notice and to any proceeds of such sale that may thereafter come into the possession of any of such persons and the lien shall be as effective against such proceeds as against the crop itself. [1961 c 264 § 1.]

60.22.020 Claim of lien—Filing—Procedure to foreclose—Time of attachment. Such lien claimant must, after the commencement of delivery of such materials and products but before commencement of the harvest of the crops, file for recording with the auditor of the county in which the crops or part thereof are raised, a claim of lien which shall be in substance in accordance with the provisions governing mechanics' liens in chapter 60.04 RCW, and foreclosed in the same manner as such liens, and such lien shall attach as of the date of such filing. [1977 c 21 § 1; 1961 c 264 § 2.]

60.22.030 Time for foreclosure—Costs—Attorney's fee. An action to foreclose such lien shall be brought within twelve calendar months after filing the claim for lien, and the court shall allow as part of the costs, the money paid for making, filing, or recording the claim and reasonable attorney's fee. [1961 c 264 § 3.]

Chapter 60.24

LIEN FOR LABOR AND SERVICES ON TIMBER AND LUMBER

Sections

60.24.020	Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber.
60.24.030	Lien on lumber—"Lumber" defined.
60.24.035	Lien for stumpage.
60.24.038	Priority of lien.
60.24.040	Period covered by labor liens.
60.24.070	Period covered by stumpage lien.
60.24.075	Claims—Contents—Form.
60.24.080	Filing claim for stumpage lien.
60.24.100	Recording claims—Fees.
60.24.110	Limitation of action.
60.24.120	Venue—Procedure.
60.24.130	Sheriff as receiver—Deposit to recover possession—Costs.
60.24.140	Pleadings by defendant—Amendments—Hearing.
60.24.150	Enforcement against all or part of property.
60.24.160	Errors in claim, effect of.
60.24.170	Purchase of property subject to lien—Presumption of notice.
60.24.180	Joinder—Costs.
60.24.190	Judgment—Sale—Disposition of proceeds.
60.24.195	Sale of property subject to lien—When.
60.24.200	Damages for eloining, injuring, destroying or removing marks, etc.—Recovery.

60.24.020 Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber. Every person performing labor upon or who shall assist in obtaining or securing saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any tugboat or towboat, which shall tow or assist in towing, from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any team or any logging engine, which shall haul or assist in hauling from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any logging or other railroad over which saw logs, spars, piles, cord wood, shingle bolts, or other timber shall be transported and delivered, shall have a lien upon the same for the work or labor done upon, or in obtaining or securing, or for services rendered in towing, transporting, hauling, or driving, the particular saw logs, spars, cord wood, shingle bolts, or other timber in said claim of lien described whether such work, labor or services was done, rendered or performed at the instance of the owner of the same or his agent. Scalpers, and bull cooks, and cooks, flunkies and waiters in lumber camps, shall be regarded as persons who assist in obtaining or securing the timber herein mentioned. [1923 c 10 § 1; 1907 c 9 § 1; 1895 c 88 § 1; 1893 c 132 § 1; RRS § 1162. Prior: Code 1881 § 1941; 1879 p 100 § 2; 1877 p 217 § 3; 1860 p 340 § 1.]

60.24.030 Lien on lumber—"Lumber" defined. Every person performing work or labor or assisting in manufacturing saw logs and other timber into lumber and shingles, has a lien upon such lumber while the same remains at the mill where it was manufactured, or

in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner. The term lumber, as used in this chapter, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from saw logs or other timber. [1893 c 132 § 2; 1893 c 10 § 1; RRS § 1163. Prior: Code 1881 § 1942; 1877 p 217 § 4. Formerly RCW 60.24.010, part.]

60.24.035 Lien for stumpage. Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles or other timber, has a lien upon the same for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price. [1893 c 132 § 3; RRS § 1164. Prior: Code 1881 § 1943; 1877 p 217 § 5. Formerly RCW 60.24.060.]

60.24.038 Priority of lien. The liens provided for in this chapter are preferred liens and are prior to any other liens, and no sale or transfer of any saw logs, spars, piles or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this chapter those for work and labor shall be preferred: *Provided*, That as between liens for work and labor claimed by several laborers on the same logs or lot of logs the claim or claims for work or labor done or performed on the identical logs proceeded against to the extent that said logs can be identified, shall be preferred as against the general claim of lien for work and labor recognized and provided for in this chapter. [1893 c 132 § 4; RRS § 1165. Prior: Code 1881 § 1944; 1877 p 217 § 6. Formerly RCW 60.24.090.]

60.24.040 Period covered by labor liens. The person rendering the service of [or] doing the work or labor named in RCW 60.24.020 and 60.24.030 is only entitled to the liens as provided herein for services, work or labor for the period of eight calendar months, or any part thereof next preceding the filing of the claim, as provided in *section 8 of this act. [1893 c 132 § 5; RRS § 1166. Prior: Code 1881 § 1945; 1877 p 217 § 7.]

*Reviser's note: "section 8 of this act" is codified as RCW 60.24.080. Section 7 (codified as RCW 60.24.075) was probably intended.

60.24.070 Period covered by stumpage lien. The person granting the privilege mentioned in RCW 60.24.035 is only entitled to the lien as provided therein for saw logs, spars, piles and other timber cut during the eight months next preceding the filing of the claim, as herein provided in RCW 60.24.075. [1893 c 132 § 6; RRS § 1167. Prior: Code 1881 § 1946; 1877 p 217 § 8.]

60.24.075 Claims—Contents—Form. Every person, within thirty days after the close of the rendition of

the services, or after the close of the work or labor mentioned in the preceding sections, claiming the benefit hereof, must file for record with the county auditor of the county in which such saw logs, spars, piles and other timber were cut, or in which such lumber or shingles were manufactured, a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:

----- Claimant, vs. -----

Notice is hereby given that ----- of ----- county, state of Washington, claims a lien upon a ----- of -----, being about ----- in quantity, which were cut or manufactured in ----- county, state of Washington, are marked thus -----, and are now lying in -----, for labor performed upon and assistance rendered in ----- said -----; that the name of the owner or reputed owner is -----; that ----- employed said ----- to perform such labor and render such assistance upon the following terms and conditions, to wit:

The said ----- agreed to pay the said ----- for such labor and assistance -----; that said contract has been faithfully performed and fully complied with on the part of said -----, who performed labor upon and assisted in ----- said ----- for the period of -----; that said labor and assistance were so performed and rendered upon said ----- between the ----- day of ----- and the ----- day of -----; and the rendition of said service was closed on the ----- day of -----, and thirty days have not elapsed since that time; that the amount of claimant's demand for said service is -----; that no part thereof has been paid except -----, and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of -----, in which amount he claims a lien upon said ----- The said ----- also claims a lien on all said ----- now owned by said ----- of said county to secure payment for the work and labor performed in obtaining or securing the said logs, spars, piles or other timber, lumber or shingles herein described.

State of Washington, county of ----- ss.
----- being first duly sworn, on oath says that he is ----- named in the foregoing claim, has heard the same read, knows the contents thereof, and believes the same to be true.

Subscribed and sworn to before me this ----- day of -----

[1893 c 132 § 7; RRS § 1168. Prior: Code 1881 § 1947; 1879 p 100 § 4; 1877 p 217 § 9. Formerly RCW 60.24.050.]

60.24.080 Filing claim for stumpage lien. Every person mentioned in RCW 60.24.035 claiming the benefit thereof must file for record with the county auditor of the county in which such saw logs, spars, piles or other timber were cut, a claim in substance the same as provided in RCW 60.24.075, and verified as therein provided. [1893 c 132 § 8; RRS § 1169. Prior: Code 1881 § 1948; 1877 p 218 § 10.]

60.24.100 Recording claims—Fees. The county auditor must record any claim filed under this chapter in a book kept by him for that purpose, which record must be indexed, as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments. [1893 c 132 § 9; RRS § 1170. Prior: Code 1881 § 1949; 1877 p 218 § 11.]

60.24.110 Limitation of action. No lien provided for in this chapter binds any saw logs, spars, piles or other timber, or lumber and shingles, for a longer period than eight calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court, within that time, to enforce the same: *Provided, however,* That in case such civil action so commenced should for any cause other than the merits, be nonsuited or dismissed, then the lien shall continue for the term of one calendar month, if the said eight months have expired, to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of eight months hereinbefore stated. [1893 c 132 § 10; RRS § 1171. Prior: Code 1881 § 1950; 1879 p 100 § 5; 1877 p 218 § 12.]

60.24.120 Venue—Procedure. The liens provided for in this chapter shall be enforced by a civil action in the superior court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that be against it; except as hereinafter otherwise provided. [1893 c 132 § 11; RRS § 1172. Prior: Code 1881 § 1951; 1877 p 218 § 13.]

60.24.130 Sheriff as receiver—Deposit to recover possession—Costs. The sheriff of the county wherein the lien is filed shall be the receiver when one is appointed, and the superior court upon a showing made shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees collected by him in his official capacity: *Provided,* That at any time when any property is in the custody of such

sheriff under the provisions of this chapter, and any person claiming any interest therein, may deposit with the clerk of the court in which such action is pending, a sum of money in an amount equal to the claim sued upon, together with one hundred dollars, to cover costs and interest, (unless the court shall make an order fixing a different amount to cover such costs and interest, then such an amount as the court shall fix to secure such costs and interest, which such action is being prosecuted) and shall have the right to demand and receive forthwith from such sheriff the possession and custody of such property: *Provided*, That in no action brought under the provisions of this chapter shall costs be allowed to lien holders unless a demand has been made for payment of his lien claim before commencement of suit, unless the court shall find the claimants at time of bringing action had reasonable ground to believe that the owner or the person having control of the property upon which such lien is claimed was attempting to defraud such claimant, or prevent the collection of such lien. [1899 c 90 § 1; 1893 c 132 § 12; RRS § 1173.]

60.24.140 Pleadings by defendant—Amendments—Hearing. If the defendant or defendants appear in a suit to enforce any lien provided by this chapter he or they shall make their answer on the merits of the complaint, and any motion or demurrer against the said complaint must be filed with the answer; and no motion shall be allowed to make complaint more definite and certain, if it appear to the court that the defendant or defendants have or should have knowledge of the facts, or that it can be made more certain and definite by facts which will appear necessarily in the testimony; but the case, unless the court sustains the demurrer to the complaint, shall be heard on the merits as speedily as possible, and amendments of the pleadings, if necessary, shall be liberally allowed. [1893 c 132 § 13; RRS § 1174.]

60.24.150 Enforcement against all or part of property. Any person who shall bring a civil action to enforce the lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such civil action, has the right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining, or which he has cut on his timber land during the eight months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said logs, spars, piles or other timber, or in manufacturing said lumber or shingles during the whole or any part of the eight months mentioned in *section seven (7) of this act, or for timber cut during the whole or any part of the eight months above mentioned. And where proceedings are commenced against any lot of saw logs, spars, piles or other timber or lumber or shingles as herein provided, and some of the lienors claim liens against the specific logs, spars, piles or other timber or lumber or shingles proceeded against, and others against the same generally, to secure their claims for work and

labor, the priority of the liens shall be determined as hereinbefore provided. [1893 c 132 § 14; RRS § 1175. Prior: Code 1881 § 1952; 1877 p 218 § 14.]

*Reviser's note: "section seven (7) of this act" is codified as RCW 60.24.075. Section 5 (codified as RCW 60.24.040) was probably intended.

60.24.160 Errors in claim, effect of. No mistake or error in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets or of the balance due was made with intent to defraud, or the court shall find that an innocent third party without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry, in any manner. [1893 c 132 § 15; RRS § 1176.]

60.24.170 Purchase of property subject to lien—Presumption of notice. It shall be conclusively presumed by the court that a party purchasing the property liened upon within thirty days given herein to claimants wherein to file their liens, is not an innocent third party, nor that he has become a bona fide owner of the property liened upon, unless it shall appear that he has paid full value for the said property, and has seen that the purchase money of the said property has been applied to the payment of such bona fide claims as are entitled to liens upon the said property under the provisions of this chapter, according to the priorities herein established. [1893 c 132 § 16; RRS § 1177.]

60.24.180 Joinder—Costs. Any number of persons claiming liens under this chapter may join in the affidavit in RCW 60.24.075 provided, and may join in the same action, and when separate actions are commenced the court may consolidate them. The court shall also allow as part of the costs the moneys paid for filing, making and recording the claim, and a reasonable attorney's fee for each person claiming a lien. [1901 c 23 § 1; 1893 c 132 § 17; RRS § 1178. Prior: Code 1881 § 1691; 1877 p 219 § 15.]

60.24.190 Judgment—Sale—Disposition of proceeds. In each civil action judgment must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale to the payment of each judgment, according to the priorities established in this chapter pro rata in its class according to the amount of such judgment. [1893 c 132 § 18; RRS § 1179. Prior: Code 1881 § 1954; 1877 p 219 § 16. FORMER PART OF SECTION: 1893 c 132 § 19; RRS § 1180 now codified as RCW 60.24.195.]

Sale of property on execution: Chapter 6.24 RCW.

60.24.195 Sale of property subject to lien—When. The court or judge may order any property subject to a lien as in this chapter provided to be sold by the sheriff as personal property is sold on execution either before or at the time judgment is rendered, as provided in RCW 60.24.190, and the proceeds of such sale must be paid into court to be applied as in RCW 60.24.190 directed. [1893 c 132 § 19; RRS § 1180. Prior: Code 1881 § 1955; 1877 p 219 § 17. Formerly RCW 60.24.190, part.]

Sale of property on execution: Chapter 6.24 RCW.

60.24.200 Damages for eloining, injuring, destroying or removing marks, etc.—Recovery. Any person who shall eloin, injure or destroy, or who shall render difficult, uncertain or impossible of identification any saw logs, spars, piles, shingles or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for the damages to the amount secured by his lien, and it being shown to the court in the civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the said person, provided he be a party to such action, or the damages may be recovered by a civil action against such person. [1893 c 132 § 20; RRS § 1181. Prior: Code 1881 § 1956; 1877 p 219 § 18.]

Chapter 60.28

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS

Sections

60.28.010	Retained percentage—Labor and material lien created—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments (as amended by 1977 ex.s. c 166).
60.28.010	Retained percentage—Labor and material lien created—Termination before completion—Chapter deemed exclusive (as amended by 1977 ex.s. c 205).
60.28.020	Excess over lien claims to contractor.
60.28.030	Foreclosure of lien—Limitation of action—Release of funds.
60.28.040	Tax liens—Priority of liens.
60.28.050	Duties of disbursing officer upon final acceptance of contract.
60.28.060	Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue.
60.28.070	Payment of reserved funds by highway commission or cities or counties prior to completion of contract—Unforeseen conditions.
60.28.080	Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination.
60.28.900	Severability—1955 c 236.

Contractor's bond for payment of mechanics, laborers, materialmen, etc., on public works: Chapter 39.08 RCW.

60.28.010 Retained percentage—Labor and material lien created—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments (as amended by 1977 ex.s. c 166). (1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the

improvement or work, a sum equal to ten percent of the first one hundred thousand dollars and five percent for all amounts over one hundred thousand dollars of such estimates, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: *Provided*, That such notice of the lien of such claimant shall be given in the manner and within the time provided in *RCW 39.08.030 through 39.08.060 as now existing and in accordance with any amendments that may hereafter be made thereto: *Provided further*, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body, at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed; or

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: *Provided*, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed.

When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) If the public body administering a contract, other than a contract governed by the provisions of RCW 60.28.070, as amended, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

(4) Whenever the toll bridge authority or the department of highways has contracted for the construction of two or more ferry vessels, thirty days after completion and final acceptance of each ferry vessel, the authority or the department may release and pay in full the amounts retained in connection with the construction of such vessel subject to the provisions of RCW 60.28.020: *Provided*, That the toll bridge authority or the department of highways may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on such ferry after a period of thirty days following final acceptance of such ferry; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the materialmen and laborers filing claims. [1977 ex.s. c 166 § 5; 1975 1st ex.s. c 104 § 1; 1970 ex.s.

c 38 § 1; 1969 ex.s. c 151 § 1; 1963 c 238 § 1; 1955 c 236 § 1; 1921 c 166 § 1; RRS § 10320.]

Reviser's note: Powers, duties, and functions of toll bridge authority and highway department transferred to department of transportation; see RCW 47.01.031. Terms "toll bridge authority" and "department of highways" mean department of transportation; see RCW 47.04.015.

60.28.010 Retained percentage—Labor and material lien created—Termination before completion—Chapter deemed exclusive (as amended by 1977 ex.s. c 205). (1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum equal to ten percent of the first one hundred thousand dollars and five percent for all amounts over one hundred thousand dollars of such estimates, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: *Provided*, That such notice of the lien of such claimant shall be given in the manner and within the time provided in *RCW 39.08.030 through 39.08.060 as now existing and in accordance with any amendments that may hereafter be made thereto: *Provided further*, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed; or

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: *Provided*, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed.

When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) If the public body administering a contract, other than a contract governed by the provisions of RCW 60.28.070, as amended, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was

provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith. [1977 ex.s. c 205 § 1; 1975 1st ex.s. c 104 § 1; 1970 ex.s. c 38 § 1; 1969 ex.s. c 151 § 1; 1963 c 238 § 1; 1955 c 236 § 1; 1921 c 166 § 1; RRS § 10320.]

Reviser's note: (1) RCW 60.28.010 was amended twice during the 1977 extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once during the same session, see RCW 1.12.025.

* (2) "RCW 39.08.030 through 39.08.060" now codified in RCW 39.08.030.

60.28.020 Excess over lien claims to contractor. After the expiration of the thirty day period, and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body shall pay to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [1975 1st ex.s. c 104 § 2; 1970 ex.s. c 38 § 2; 1967 ex.s. c 26 § 23; 1955 c 236 § 2; 1921 c 166 § 2; RRS § 10321.]

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

60.28.030 Foreclosure of lien—Limitation of action—Release of funds. Any person, firm, or corporation filing a claim against the reserve fund shall have four months from the time of the filing thereof in which to bring an action to foreclose the lien. The lien shall be enforced by action in the superior court of the county where filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien against it: *Provided*, That the public body shall not be required to make any detailed answer to any complaint or other pleading but need only certify to the court the name of the contractor; the work contracted to be done; the date of the contract; the date of completion and final acceptance of the work; the amount retained; the amount of taxes certified due or to become due to the state; and all claims filed with it showing respectively the dates of filing, the names of claimants, and amounts claimed. Such certification shall operate to arrest payment of so much of the funds retained as is required to discharge the taxes certified due or to become due and the claims filed in accordance with this chapter. In any action brought to enforce the lien, the claimant, if he

prevails, is entitled to recover, in addition to all other costs, attorney fees in such sum as the court finds reasonable. If a claimant fails to bring action to foreclose his lien within the four months period, the reserve fund shall be discharged from the lien of his claim and the funds shall be paid to the contractor. The four months limitation shall not, however, be construed as a limitation upon the right to sue the contractor or his surety where no right of foreclosure is sought against the fund. [1979 1st ex.s. c 38 § 1; 1955 c 236 § 3; 1927 c 241 § 1; 1921 c 166 § 3; RRS § 10322.]

60.28.040 Tax liens—Priority of liens. The amount of all taxes, increases and penalties due or to become due under Title 82 RCW, from a contractor or his successors or assignees with respect to a public improvement contract wherein the contract price is twenty thousand dollars or more shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract, and the amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid. [1971 ex.s. c 299 § 1; 1955 c 236 § 4. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370–204a, part; RCW 82.32.250, part.]

Severability—Effective dates—1971 ex.s. c 299: See notes following RCW 82.04.050.

60.28.050 Duties of disbursing officer upon final acceptance of contract. Upon final acceptance of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of said contract. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage. [1970 ex.s. c 38 § 3; 1967 ex.s. c 26 § 24; 1955 c 236 § 5. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370–204a, part; RCW 82.32.250, part.]

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

60.28.060 Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue. If within thirty days after receipt of notice by the department of revenue of the completion of the contract, the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the department of revenue may certify to the disbursing officer the amount of all taxes, increases and penalties due from the contractor, together with the amount of all taxes due and to become due with respect

to the contract and may request payment thereof to the department of revenue in accordance with the priority provided by this chapter. The disbursing officer shall within ten days after receipt of such certificate and request pay to the department of revenue the amount of all taxes, increases and penalties certified to be due or to become due with respect to the particular contract, and, after payment of all claims which by statute are a lien upon the retained percentage withheld by the disbursing officer, shall pay to the department of revenue the balance, if any, or so much thereof as shall be necessary to satisfy the claim of the department of revenue for the balance of all taxes, increases or penalties shown to be due by the certificate of the department of revenue. If the contractor owes no taxes imposed pursuant to Title 82 RCW, the department of revenue shall so certify to the disbursing officer. [1967 ex.s. c 26 § 25; 1955 c 236 § 6. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370–204a, part; RCW 82.32.250, part.]

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

60.28.070 Payment of reserved funds by highway commission or cities or counties prior to completion of contract—Unforeseen conditions. Where final completion of a contract executed by (1) the Washington state highway commission for the construction of any highway building, road, bridge, street, or any part of a public highway or (2) a city or county for construction of any urban arterial project for which urban arterial trust account moneys are to be expended is delayed by any unforeseen condition beyond the control of the contractor and the reservation of moneys earned as required herein shall work undue hardship on the contractor, then the highway commission, city or county, as appropriate, thirty days after completion of all work required under the contract other than that delayed by such unforeseen condition and no taxes having been certified as due or to become due by the department of revenue and no claims filed by any materialman or laborer, may at its discretion order funds reserved for the work actually completed paid to the contractor upon the contractor's delivering good and sufficient bond with two or more sureties, or with a surety company, in the amount of the reserved funds then paid to the contractor, to the effect that no taxes shall be certified or claims filed for work done other than that delayed by the unforeseen condition within a period of thirty days following final acceptance of said improvement or work as completed; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the materialmen and laborers filing claims. [1969 ex.s. c 151 § 2; 1967 ex.s. c 26 § 26; 1957 c 91 § 1.]

Reviser's note: Powers, duties, and functions of state highway commission transferred to department of transportation; see RCW 47.01-.031. The term "state highway commission" means department of transportation; see RCW 47.04.015.

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

60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—

Termination. (1) If any delay in issuance of notice to proceed or in construction following an award of any public construction contract is primarily caused by acts or omissions of persons or agencies other than the contractor and a preliminary, special or permanent restraining order of a court of competent jurisdiction is issued pursuant to litigation and the appropriate public contracting body does not elect to delete the completion of the contract or order funds reserved paid to the contractor as provided by RCW 60.28.010(3) and 60.28.070 respectively, the appropriate contracting body will issue a change order or force account directive to cover reasonable costs incurred by the contractor as a result of such delay. These costs shall include but not be limited to contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, bonds, professional fees, and subcontracts, attributable to such delay plus a reasonable sum for overhead and profit.

In the event of a dispute between the contracting body and the contractor, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, under the then obtaining rules of the American Arbitration Association.

If the delay caused by litigation exceeds six months, the contractor may then elect to terminate the contract and to delete the completion of the contract and receive payment in proportion to the amount of the work completed plus the cost of the delay. Amounts retained and accumulated under RCW 60.28.010 shall be held for a period of thirty days following the election of the contractor to terminate. Election not to terminate the contract by the contractor shall not affect the accumulation of costs incurred as a result of the delay provided above.

(2) This section shall not apply to any contract awarded pursuant to an invitation for bid issued on or before July 16, 1973. [1973 1st ex.s. c 62 § 3.]

Severability—1973 1st ex.s. c 62: See note following RCW 39.04.120.

Pollution and preservation of natural resources laws to be included in bid invitations, change orders, costs: RCW 39.04.120.

60.28.900 Severability—1955 c 236. If any section, provision or part of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole or any section, provision or part hereof not adjudged invalid or unconstitutional. [1955 c 236 § 8.]

Chapter 60.32

LABOR LIENS ON FRANCHISES, EARNINGS, AND PROPERTY OF CERTAIN COMPANIES

Sections

60.32.010	Liens authorized.
60.32.020	Notice of lien—Contents—Filing and serving.
60.32.030	Manner of serving notice.
60.32.040	Manner of enforcing liens.
60.32.050	Receiver or assignee to pay claims first.

60.32.010 Liens authorized. Every person performing labor for any person, company or corporation, in the operation of any railway, canal or transportation company, or any water, mining or manufacturing company, sawmill, lumber or timber company, shall have a prior lien on the franchise, earnings, and on all the real and personal property of said person, company or corporation, which is used in the operation of its business, to the extent of the moneys due him from such person, company or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of his claim therefor, as hereinafter provided; and no mortgage, deed of trust or conveyance shall defeat or take precedence over said lien. [1897 c 43 § 1; RRS § 1149.]

60.32.020 Notice of lien—Contents—Filing and serving. No person shall be entitled to the lien given by RCW 60.32.010, unless he shall, within ninety days after he has ceased to perform labor for such person, company or corporation, filed for record with the county auditor of the county in which said labor was performed, or in which is located the principal office of such person, company or corporation in this state, a notice of claim, containing a statement of his demand, after deducting all just credits and offsets, the name of the person, company or corporation, and the name of the person or persons employing claimant, if known, with the statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve a copy thereof on said person, company or corporation within thirty days after the same is so filed for record.

Any number of claimants may join in the same notice for the purpose of filing and enforcing their liens, but the amount claimed by each claimant shall be separately stated. [1977 ex.s. c 176 § 1; 1897 c 43 § 2; RRS § 1150.]

60.32.030 Manner of serving notice. Service of notice, as herein required, may be made in the same manner as summons in civil actions. [1897 c 43 § 3; RRS § 1151.]

Service of summons in civil actions: RCW 4.28.080.

60.32.040 Manner of enforcing liens. Any such lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed. [1897 c 43 § 4; RRS § 1152.]

Foreclosure of mechanics' liens: RCW 60.04.120.

60.32.050 Receiver or assignee to pay claims first. Whenever a receiver or assignee is appointed for any person, company or corporation, the court shall require such receiver or assignee to pay all claims for which a lien could be filed under this chapter, before the payment of any other debts or claims, other than operating expenses. [1897 c 43 § 5; RRS § 1153.]

Chapter 60.34

LIEN OF RESTAURANT, HOTEL, TAVERN, ETC.,
EMPLOYEES

Sections

60.34.010	Liens authorized.
60.34.020	Notice of lien—Contents—Filing and serving.
60.34.030	Manner of serving notice.
60.34.040	Manner of enforcing liens—Costs.
60.34.050	Priority of lien.

60.34.010 Liens authorized. Every person performing labor in the operation of any restaurant, hotel, tavern, or other place of business engaged in the selling of prepared foods or drinks, or any hotel service employee, shall have a lien on the earnings and on all the property of his employer used in the operation of said business to the extent of the moneys due him for labor performed within three months next preceding the filing of his claim therefor. [1953 c 205 § 1.]

60.34.020 Notice of lien—Contents—Filing and serving. The lien claimant shall within thirty days after he has ceased to perform such labor, file for record with the auditor of the county in which the labor was performed a notice of claim, containing a statement of his demand, the name of the employer and the name of the person employing him, if known, with a statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve or mail a copy thereof to said employer within said period. [1953 c 205 § 2.]

60.34.030 Manner of serving notice. Service of the notice of claim may be made in the same manner as summons in civil actions. [1953 c 205 § 3.]

Service of summons in civil actions: RCW 4.28.080.

60.34.040 Manner of enforcing liens—Costs. The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed, when said lien is upon real property, or in the same manner as provided in chapter 60.10 RCW and RCW 61.12.162 when the lien is upon personal property. The court may allow as part of the costs of the action the money paid for filing or recording the claim and a reasonable attorney fee. [1969 c 82 § 12; 1959 c 173 § 1; 1953 c 205 § 4.]

Foreclosure of mechanics' liens: RCW 60.04.120.

60.34.050 Priority of lien. The lien created herein shall be preferred to any encumbrance which may attach after the commencement of the labor and is also preferred to any encumbrance which may have attached previously to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1953 c 205 § 5.]

Chapter 60.36

LIEN ON VESSELS AND EQUIPMENT FOR
LABOR, MATERIAL, DAMAGES, AND HANDLING
CARGO

Sections

60.36.010	Liens created.
60.36.020	Actions to enforce liens.
60.36.030	Liens for handling cargo.
60.36.040	Liens for handling cargo—Priority.
60.36.050	Liens for handling cargo—Foreclosure.
60.36.060	Lien for breach of contract for towing, dunnaging, stevedoring, etc.

60.36.010 Liens created. All steamers, vessels and boats, their tackle, apparel and furniture, are liable—

(1) For service rendered on board at the request of, or under contract with their respective owners, charterers, masters, agents or consignees.

(2) For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, subcontractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020.

(3) For their wharfage and anchorage within this state.

(4) For nonperformance or malperformance of any contract for the transportation of persons or property between places within this state, or to or from places within this state, made by their respective owners, masters, agents or consignees.

(5) For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state. Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in the order of the subdivisions hereinbefore enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued. [1901 c 24 § 1; Code 1881 § 1939; 1877 p 216 § 1; RRS § 1182. Prior: 1858 p 29 § 1.]

Lien of pilot for pilotage compensation: RCW 88.16.140.

60.36.020 Actions to enforce liens. Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any superior court of this state as provided

in RCW 61.12.162. [1969 c 82 § 19; Code 1881 § 1940; 1877 p 216 § 2; RRS § 1183.]

60.36.030 Liens for handling cargo. All steamers, vessels and boats, their tackle, apparel and furniture shall be held liable at all ports and places within this state or within the jurisdiction of the courts of this state or within the jurisdiction of the courts of the United States in said state for services rendered by stevedores, longshoremen or others engaged in the loading, unloading, stowing or dunnaging of cargo in or from any steamer, vessel or boat in any harbor or at any other place within said state, or within the jurisdiction of the courts thereof as above stated, and said steamers, vessels and boats shall further be liable as per their contracts for all services performed upon wharfs or landing places by stevedores, longshoremen or others: *Provided*, That such services must have been so performed in and about and be connected with the loading, unloading, dunnaging or stowing of said cargo. [1901 c 75 § 1; RRS § 1184.]

60.36.040 Liens for handling cargo—Priority. Demands for wages and all sums due under contracts or otherwise for the performance of all or any of the services mentioned in RCW 60.36.030 shall constitute liens upon all steamers, vessels and boats, their tackle, apparel and furniture, and shall have priority over all other demands save and excepting the demands mentioned in RCW 60.36.010(1), (2) and (3), to which said demands the lien hereby provided shall be subordinate: *Provided*, That such liens shall only continue in force for the period of three years from the date when such work was done or the last services performed by such stevedores, longshoremen or others. [1901 c 75 § 2; RRS § 1185.]

60.36.050 Liens for handling cargo—Foreclosure. The liens hereby created may be foreclosed as provided in RCW 61.12.162. [1969 c 82 § 13; 1901 c 75 § 3; RRS § 1186.]

60.36.060 Lien for breach of contract for towing, dunnaging, stevedoring, etc. Whenever the owner, charterer, or any person or corporation operating, managing or controlling any steamship, vessel or boat shall wilfully fail, neglect or refuse to carry out or perform any express contract or portion thereof for the towing, loading, unloading, dunnaging or stevedoring of such steamship, vessel or boat, any person or persons, firm or corporation sustaining thereby any loss or damage which is capable of definite ascertainment shall have a lien upon such steamship, vessel or boat for said loss or damage. The rank and priority of the lien hereby created and the manner of its enforcement shall be fixed, controlled and regulated by the provisions of the existing law pertaining to liens for similar services already performed. [1903 c 149 § 1; RRS § 1187.]

Chapter 60.40

LIEN FOR ATTORNEY'S FEES

Sections

60.40.010	Lien created.
60.40.020	Proceedings to compel delivery of money or papers.
60.40.030	Procedure when lien is claimed.

60.40.010 Lien created. An attorney has a lien for his compensation, whether specially agreed upon or implied, as hereinafter provided: (1) Upon the papers of his client, which have come into his possession in the course of his professional employment; (2) upon money in his hands belonging to his client; (3) upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party; (4) upon a judgment to the extent of the value of any services performed by him in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice. [Code 1881 § 3286; 1863 p 406 § 12; RRS § 136.]

60.40.020 Proceedings to compel delivery of money or papers. When an attorney refuses to deliver over money or papers, to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of any judge of a court of record, to do so within a specified time, or show cause why he should not be punished for a contempt. [Code 1881 § 3287; 1863 p 406 § 13; RRS § 137.]

60.40.030 Procedure when lien is claimed. If, however, the attorney claim a lien, upon the money or papers, under the provisions of *this chapter, the court or judge may: (1) Impose as a condition of making the order, that the client give security in a form and amount to be directed, to satisfy the lien, when determined in an action; (2) summarily to inquire into the facts on which the claim of a lien is founded, and determine the same; or (3) to refer it, and upon the report, determine the same as in other cases. [Code 1881 § 3288; 1863 p 406 § 14; RRS § 138.]

*Reviser's note: "this chapter" appeared in section 3288, chapter 250 of the Code of 1881, the lien sections of which are codified as chapter 60.40 RCW.

Chapter 60.44

LIEN OF DOCTORS, NURSES, HOSPITALS, AMBULANCE SERVICES

Sections

60.44.010	Liens authorized.
60.44.020	Notice of lien—Contents—Filing.

60.44.030	Record of claims.
60.44.040	Taking note—Effect on lien.
60.44.050	Settlement of damages—Effect on lien.
60.44.060	Enforcement of lien—Payment as evidence.

Lien of department of social and health services for medical care of injured recipient, payment of tort feisor or insurer does not discharge lien: RCW 74.09.180–74.09.186.

Lien on funds withheld by employer from employee's pay: RCW 49.52.030 and 49.52.040.

60.44.010 Liens authorized. Every operator, whether private or public, of an ambulance service or of a hospital, and every duly licensed nurse, practitioner, physician, and surgeon rendering service, or transportation and care, for any person who has received a traumatic injury and which is rendered by reason thereof shall have a lien upon any claim, right of action, and/or money to which such person is entitled against any tort-feasor and/or insurer of such tort-feasor for the value of such service, together with costs and such reasonable attorney's fees as the court may allow, incurred in enforcing such lien: *Provided, however,* That nothing in this chapter shall apply to any claim, right of action, or money accruing under the workmen's compensation act of the state of Washington, and: *Provided, further,* That all the said liens for service rendered to any one person as a result of any one accident or event shall not exceed twenty-five percent of the amount of an award, verdict, report, decision, decree, judgment, or settlement. [1975 1st ex.s. c 250 § 1; 1937 c 69 § 1; RRS § 1209-1.]

60.44.020 Notice of lien—Contents—Filing. No person shall be entitled to the lien given by RCW 60.44.010 unless such person shall, within twenty days after the date of such injury or receipt of transportation or care, or, if settlement has not been accomplished and payment made to such injured person, then at any time before such settlement and payment, file for record with the county auditor of the county in which said service was performed, a notice of claim stating the name and address of the person claiming the lien and whether such person claims as a practitioner, physician, nurse, ambulance service, or hospital, the name and address of the patient and place of domicile or residence, the time when and place where the alleged fault or negligence of the tort-feasor occurred, and the nature of the injury if any, the name and address of the tort-feasor, if same or any thereof are known, which claim shall be subscribed by the claimant and verified before a person authorized to administer oaths. [1975 1st ex.s. c 250 § 2; 1937 c 69 § 2; RRS § 1209-2.]

60.44.030 Record of claims. The county auditor shall record the claims mentioned in this chapter in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1937 c 69 § 3; RRS § 1209-4.]

60.44.040 Taking note—Effect on lien. The taking of a promissory note or other evidence of indebtedness for any services performed, as provided in this chapter, shall not discharge the lien therefor unless expressly received as a payment for such services and so specified therein. [1937 c 69 § 4; RRS § 1209-4.]

60.44.050 Settlement of damages—Effect on lien. No settlement made by and between the patient and tort feisor and/or insurer shall discharge the lien against any money due or owing by such tort feisor or insurer to the patient or relieve the tort feisor and/or insurer from liability by reason of such lien unless such settlement also provides for the payment and discharge of such lien or unless a written release or waiver of any such claim of lien, signed by the claimant, be filed in the court where any action has been commenced on such claim, or in case no action has been commenced against the tort feisor and/or insurer, then such written release or waiver shall be delivered to the tort feisor and/or insurer. [1937 c 69 § 5; RRS § 1209-5.]

60.44.060 Enforcement of lien—Payment as evidence. Such lien may be enforced by a suit at law brought by the claimant or his assignee within one year after the filing of such lien against the said tort feisor and/or insurer. In the event that such tort feisor and/or insurer shall have made payment or settlement on account of such injury, the fact of such payment shall only for the purpose of such suit be prima facie evidence of the negligence of the tort feisor and of the liability of the payer to compensate for such negligence. [1937 c 69 § 6; RRS § 1209-6.]

Chapter 60.45

LIEN OF DEPARTMENT OF SOCIAL AND HEALTH SERVICES FOR MEDICAL CARE FURNISHED INJURED RECIPIENT

Sections

60.45.010 Medical care to injured recipient—Recovery of cost against tort feisor or insurer—Lien created, filing—Payment to recipient does not discharge lien.

60.45.010 Medical care to injured recipient—Recovery of cost against tort feisor or insurer—Lien created, filing—Payment to recipient does not discharge lien. See RCW 74.09.180–74.09.186.

Chapter 60.48

LIEN FOR ENGINEERING SERVICES

Sections

60.48.010 Lien authorized.
60.48.020 Notice of lien—Foreclosure.

60.48.010 Lien authorized. Any person who at the request of the owner of any real property, or his duly authorized agent, surveys, establishes or marks the boundaries of, or prepares maps, plans or specifications for the improvement of such real property, or does any other engineering work upon such real property, shall have a lien upon such real property for the agreed price or reasonable value of such work so performed. [1931 c 107 § 1; RRS § 1131-4.]

60.48.020 Notice of lien—Foreclosure. The liens created by this chapter shall be established by notice

filed and shall be foreclosed in the manner as is now provided by law for the establishment and foreclosure of liens upon real estate for clearing, grading or otherwise improving the same. [1931 c 107 § 2; RRS § 1131-5.]

Liens for improving real property: RCW 60.04.040.

Chapter 60.52

LIEN FOR SERVICES OF SIRES

Sections

60.52.010	Liens authorized—Filing statement.
60.52.020	Auditor's certificate—Contents—Posting.
60.52.030	Statement of lien—Filing—Duration of lien.
60.52.040	Foreclosure of lien.
60.52.050	Auditor's fees.

60.52.010 Liens authorized—Filing statement. In order to secure to the owner or owners of sires payment for service, the following provisions are enacted: That every owner of a sire having a service fee, in order to have a lien upon the female served, and upon the get of any such sire, under the provisions of this chapter, for such service, shall file for record with the county auditor of the county where said sire is kept for service a statement, verified by oath or affirmation, to the best of his knowledge and belief, giving the name, age, description and pedigree, as well as the terms and conditions upon which such sire is advertised for service: *Provided*, That owners of sires who are not in possession of pedigrees for such sires shall not be debarred from the benefits of this chapter. [1890 p 451 § 1; RRS § 3056.]

60.52.020 Auditor's certificate—Contents—Posting. The county auditor, upon the receipt of the statement as specified in RCW 60.52.010, duly verified by affidavit, shall issue a certificate to the owner or owners of said sire, which shall be posted by the owner in a conspicuous place where said sire may be stationed, which certificate shall state the name, age, description, pedigree and ownership of such sire, the terms and conditions upon which the said sire is advertised for service, and that the provisions of this chapter, so far as relates to the filing of the statement aforesaid, has been complied with. [1890 p 451 § 2; RRS § 3057.]

60.52.030 Statement of lien—Filing—Duration of lien. The owner or owners of any such sire receiving such certificate, by complying with RCW 60.52.010 and 60.52.020, shall obtain and have a lien upon the female served for the period of one year from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: *Provided*, Said owner or owners shall file for record a statement of account, verified by affidavit, with the county auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served, within ten months from the date of service or date of birth, as the case may be: *Provided further*, That the lien upon the

get of any such sire shall be a preferred lien: *And provided further*, That no sale or transfer of any female animal served shall defeat the right of such lien holder. [1913 c 53 § 1; 1890 p 451 § 3; RRS § 3058.]

60.52.040 Foreclosure of lien. Liens under this chapter may be foreclosed as provided in chapter 60.10 RCW and RCW 61.12.162. [1969 c 82 § 14; 1890 p 452 § 4; RRS § 3059.]

60.52.050 Auditor's fees. For filing certificate, making copy of such affidavit, and the certificate of date of such filing, the clerk of record shall be entitled to the same fees as are provided by law for similar service in regard to chattel mortgages. [1890 p 452 § 5; RRS § 3059 1/2.]

Fees for filing chattel mortgages: RCW 62A.9-403(4), (5).

Chapter 60.56

AGISTER AND TRAINER LIENS

Sections

AGISTER AND TRAINER LIENS—1909 ACT

60.56.010	Liens created.
60.56.020	Enforcement of lien.
60.56.030	Delivery of possession—Effect on lien.

AGISTER AND TRAINER LIENS—1891 ACT

60.56.040	Liens created.
60.56.050	Enforcement of lien.

AGISTER AND TRAINER LIENS—1909 ACT

60.56.010 Liens created. Any farmer, ranchman, herder of cattle, tavern keeper, livery and boarding stable keeper or any other person, to whom any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, and training, caring for or ranching, shall have a lien upon said horses, mules, cattle or sheep for such amount that may be due for said feeding, herding, pasturing, training, caring for, and ranching, and shall be authorized to retain possession of said horses, mules or cattle or sheep, until said amount is paid. [1909 c 176 § 1; RRS § 1197.]

60.56.020 Enforcement of lien. Any person having a lien under the provisions of RCW 60.56.010 for feeding, herding, pasturing, training, caring for, or ranching any horses, mules, cattle or sheep, shall retain such animal for a period of ten days, at the expiration of which time, if the owner of such animal does not satisfy such lien, the sheriff or any constable may sell such animal at public auction after giving the owner ten days' notice of the time and place of such sale by delivering a copy of such notice to the owner, or in case personal service cannot be had, by publishing same in a newspaper of general circulation in said county where said feeding, herding, pasturing, training, caring for, and ranching was furnished; if there be no paper of general circulation in said county, then by posting notices of the time and place of such sale in three conspicuous places in said county, and after satisfying the lien and costs that may

accrue, any residue remaining shall be paid to the owner of said animal or person who may be lawfully entitled to the same. [1909 c 176 § 2; RRS § 1199. FORMER PART OF SECTION: 1891 c 80 § 2 now codified as RCW 60.56.050.]

60.56.030 Delivery of possession—Effect on lien. Whenever any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, training, caring for, and ranching to any farmer, ranchman, herder of cattle, tavern keeper, livery or boarding stable keeper, continuously for some time, either definite or indefinite, the voluntary delivery of the same to the owner or his agent shall not waive or defeat the lien provided for in RCW 60.56.010, and the person having such lien may enforce his lien against said property in any court of competent jurisdiction at any time within ten days after parting with the possession thereof: *Provided*, That such lien shall not attach to the interest nor affect the rights of a third person who may have acquired an interest in or title to an animal against which a lien is claimed, for value and without knowledge of the claimed lien, while such animal is not in possession of the claimant. [1909 c 176 § 3; RRS § 1200.]

AGISTER AND TRAINER LIENS—1891 ACT

60.56.040 Liens created. Any farmer, ranchman, herder of cattle, tavern keeper, livery and boarding stable keeper to whom any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, training, caring for or ranching, shall have a lien upon said horses, mules, cattle or sheep for the amount that may be due for such feeding, herding, pasturing, training, caring for or ranching, and shall be authorized to retain possession of such horses, mules, cattle or sheep until the said amount is paid: *Provided*, That these provisions shall not be construed to apply to stolen stock. [1891 c 80 § 1.]

60.56.050 Enforcement of lien. Any person having a lien under the provisions of RCW 60.56.040, may enforce the same by an action in any court of competent jurisdiction; and said property may be sold on execution for the purpose of satisfying the amount of such judgment and costs of sale, together with the proper costs of keeping the same up to the time of said sale. [1891 c 80 § 2; RRS § 1198. Formerly RCW 60.56.020, part.]

Chapter 60.60

LIEN FOR TRANSPORTATION, STORAGE, ADVANCEMENTS, ETC.

Sections

60.60.010	Liens created.
60.60.020	Livestock and perishable property—Sale of.
60.60.030	Sale of other property.
60.60.040	Application of proceeds.
60.60.050	Special contract not affected.
60.60.060	Notice, how given.

60.60.010 Liens created. Every person, firm or corporation who, as a commission merchant, carrier, wharfinger or storage warehouseman, shall make advances for freight, transportation, wharfage or storage upon the personal property of another, or shall carry or store such personal property, shall have a lien thereon, so long as the same remains in his possession, for the charges for advances, freight, transportation, wharfage or storage, and it shall be lawful for such person, firm or corporation to cause such property to be sold as is herein in this chapter provided. [1927 c 144 § 1; Code 1881 § 1980; 1863 p 421 § 11; 1860 p 288 § 11; RRS § 1191.]

60.60.020 Livestock and perishable property—Sale of. If said property consists of livestock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or consists of perishable property liable, if kept, to destruction, waste or great depreciation, the person, firm or corporation having such lien may sell the same upon giving ten days' notice. [1927 c 144 § 2; Code 1881 § 1981; 1863 p 421 § 13; 1860 p 288 § 13; RRS § 1192.]

60.60.030 Sale of other property. All other property upon which such charges may be unpaid, due, and a lien after the same shall have remained in store uncalled for, for a period of thirty days after such charges shall have become due, may be sold by the person or persons having a lien for the payment of such charges upon giving ten days' notice: *Provided*, That where the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of the sale. [Code 1881 § 1982; 1863 p 421 § 12; 1860 p 288 § 12; RRS § 1193.]

60.60.040 Application of proceeds. The moneys arising from sales made under the provisions of this chapter shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transportation, wharfage or storage, for whose benefit the sale shall [have] been made; the surplus, if any, shall be retained subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owner still remaining in store uncalled for, if any there be, and to the demand of the owner of the property, who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special fund for the benefit of the lawful claimant thereof. [Code 1881 § 1983; 1863 p 421 § 14; 1860 p 288 § 14; RRS § 1194.]

60.60.050 Special contract not affected. Nothing in this chapter contained shall be so construed as to alter or affect the terms of any special contract in writing, made by the parties as to the advances, affreightment, wharfage or storage; but when any such special contract shall have been made, its terms shall govern irrespective of this chapter. [Code 1881 § 1984; RRS § 1195.]

60.60.060 Notice, how given. All notices required under this chapter shall be given as is or may be by law provided in cases of sales of personal property upon execution. [Code 1881 § 1985; 1863 p 421 § 15; 1860 p 288 § 15; RRS § 1196.]

Sale of property on execution: Chapter 6.24 RCW.

Chapter 60.62

LIENS FOR TOWING, STORAGE OF MOTOR VEHICLES

Section
60.62.011 Lien authorized—Sale of vehicle—Proceeds of sale.

60.62.011 Lien authorized—Sale of vehicle—Proceeds of sale. See RCW 46.52.102–46.52.119.

Chapter 60.64

LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1915 ACT

Sections
60.64.003 "Hotel" defined.
60.64.005 Record of guests—Hotels and trailer camps.
60.64.007 Liability for loss of valuables, baggage and other property.
60.64.010 Lien on property of guest—"Guest" defined.
60.64.040 Sale—Notice—Disposition of funds.
60.64.050 Obtaining accommodations by fraud—Penalty.

Lien of hotels, lodging and boarding houses—1890 act: Chapter 60.66 RCW.

60.64.003 "Hotel" defined. See RCW 19.48.010.

60.64.005 Record of guests—Hotels and trailer camps. See RCW 19.48.020.

60.64.007 Liability for loss of valuables, baggage and other property. See RCW 19.48.030 and 19.48.070.

60.64.010 Lien on property of guest—"Guest" defined. The keeper of any hotel, boarding house or lodging house, whether individual, partnership or corporation, has a lien upon, and may retain, all baggage, sample cases, and other property, lawfully in the possession of a guest, boarder, or lodger, brought upon the premises by such guest, boarder, or lodger, for the proper charges due from him or her, on account of his or her food, board, room rent, lodging and accommodation, and for such extras as are furnished at his or her request, and for all money and credit paid for or advanced to him or her; and for the costs of enforcing such lien; and said hotel keeper, inn keeper, lodging house keeper or boarding house keeper, shall have the right to retain and hold possession of such baggage, sample cases and other property until the amount of such charges and moneys be fully paid, and to sell such baggage, sample cases, or other property for the payment of such lien, charges and moneys in the manner provided in RCW 60.64.040; and such baggage, sample cases and property shall not be subject to attachment or execution until

such lien and storage charges and the cost of satisfying such lien are fully satisfied: *Provided, however,* That if any baggage, sample cases, or property becoming subject to the lien herein provided for does not belong to the guest, boarder or lodger who incurred the charges or indebtedness secured thereby at the time when such charges or indebtedness shall be incurred, and if the hotel, inn, boarding house or lodging house keeper entitled to such lien receives actual notice of such fact at any time before the sale of such baggage, sample cases or property hereunder, then and in that event such baggage, sample cases and property which are subject to said lien and do not belong to said guest, boarder or lodger at the time when such charges or indebtedness shall be incurred, shall not be subject to sale in the manner herein provided, but the same may be sold in the manner provided by law for the sale of property under a writ of execution to satisfy a judgment obtained in any action brought to recover the said charges or indebtedness. A guest, within the meaning of this chapter and chapter 19.48 RCW, includes each and every person who is a member of the family of, or dependent upon, a guest, boarder or lodger, in such hotel, inn, boarding house or lodging house, and for whose support such tenant, guest, boarder or lodger is legally liable. [1929 c 216 § 4; 1915 c 190 § 5; RRS § 6864. Formerly RCW 60.64.010 through 60.64.030.]

Severability—1929 c 216: See RCW 19.48.900.

60.64.040 Sale—Notice—Disposition of funds. If such lien and all such charges and moneys are not fully paid and satisfied within sixty days from the time when such charges and moneys, respectively, become due, the keeper of such hotel, inn, boarding house or lodging house, may then proceed to sell such baggage, sample cases and other property, or any part thereof, at public auction, after giving ten days notice of the time and place of sale by posting said notice in three public places in the city or town wherein such hotel, inn, boarding house or lodging house is located, and by mailing a notice of the time and place of sale to such guest[,] boarder or lodger at the place of residence, if any, registered by him or her on the register, if any, of said hotel, inn, boarding house or lodging house; and after satisfying the lien and paying all legal charges due from such guest, boarder or lodger, including proper charges for storage of the said baggage, sample cases or property, and any expense of selling the same that may accrue, any residue remaining shall, on demand, within one year after such sale, be paid to such guest, boarder or lodger, or his or her legal representatives: *Provided, however,* That should such guest, boarder or lodger fail or refuse to register from any particular town or city, or not register at all, the notice herein required to be mailed shall be addressed to the name of such guest, boarder or lodger at the city or town wherein such hotel, inn, boarding house or lodging house is located; and such sale shall be a perpetual bar to any action against said hotel, inn, boarding house or lodging house keeper for the recovery of such baggage, sample cases, or property, or of the value thereof, or for any damage arising from the failure of such guest, boarder or lodger to receive such

baggage, sample cases, or property. [1929 c 216 § 5; 1915 c 190 § 6; RRS § 6865.]

60.64.050 Obtaining accommodations by fraud—Penalty. See RCW 19.48.110.

Chapter 60.66

LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1890 ACT

Sections

60.66.010 Lien on property of guest.
60.66.020 Sale to satisfy lien—Notice.

Lien of hotels, lodging and boarding houses—1915 act: Chapter 60.64 RCW.

60.66.010 Lien on property of guest. Hereafter all hotel keepers, inn keepers, lodging house keepers and boarding house keepers in this state shall have a lien upon the baggage, property, or other valuables of their guests, lodgers or boarders, brought into such hotel, inn, lodging house or boarding house by such guests, lodgers or boarders, for the proper charges due from such guests, lodgers or boarders for their accommodation, board or lodging and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property or other valuables until such charges are fully paid, and to sell such baggage, property or other valuables for the payment of such charges in the manner provided in RCW 60.66.020. [1890 p 96 § 1; RRS § 1201.]

60.66.020 Sale to satisfy lien—Notice. Whenever any baggage, property or other valuables which have been retained by any hotel keeper, inn keeper, lodging house keeper or boarding house keeper, in his possession by virtue of the provision of RCW 60.66.010, shall remain unredeemed for the period of three months after the same shall have been so retained, then it shall be lawful for such hotel keeper, inn keeper, lodging house keeper or boarding house keeper to sell such baggage, property or other valuables at public auction, after giving the owner thereof ten days' notice of the time and place of such sale, through the post office, or by advertising in some newspaper published in the county where such sale is made, or by posting notices in three conspicuous places in such county, and out of the proceeds of such sale to pay all legal charges due from the owner of such baggage, property or valuables, including proper charges for storage of the same, and the overplus, if any, shall be paid to the owner upon demand. [1890 p 96 § 2; RRS § 1202.]

Chapter 60.68

LIEN FOR INTERNAL REVENUE TAXES

Sections

60.68.010 Notice of lien and of discharge may be filed.
60.68.020 Notice of lien to be entered.
60.68.030 Certificate of discharge to be entered.
60.68.040 Auditor's fees.
60.68.050 Purpose.

[Title 60 RCW (1979 Ed.)—p 28]

60.68.010 Notice of lien and of discharge may be filed. Notices of liens for internal revenue taxes payable to the United States of America and certificates discharging such liens may be filed in the office of the county auditor of any county or counties of the state of Washington within which the property subject to such lien is situated. [1925 c 15 § 1; RRS § 11337-1.]

60.68.020 Notice of lien to be entered. When a notice of such tax lien is filed, the county auditor shall forthwith enter the same in an alphabetical federal tax lien index to be provided by the board of county commissioners, showing on one line the name and residence of the taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax and penalty assessed. He shall file and keep all original notices so filed in numerical order in a file or files to be provided by the board of county commissioners and designated federal tax lien notices. [1925 c 15 § 2; RRS § 11337-2.]

60.68.030 Certificate of discharge to be entered. When a certificate of discharge of any tax lien, issued by the collector of internal revenue or other proper officer, is filed in the office of the county auditor, where the original notice of lien is filed, said county auditor shall enter the same with date of filing in said tax lien index on a line where the notice of the lien so discharged is entered, and permanently attach the original certificate of discharge to the original notice of lien. [1925 c 15 § 3; RRS § 11337-3.]

60.68.040 Auditor's fees. The auditor shall receive five dollars for filing and indexing each notice of lien, and three dollars for each certificate of discharge.

The provisions of RCW 36.18.060 requiring advance payment of fees before performance of services shall not apply to the fees and services under this chapter. [1977 c 62 § 1; 1955 c 250 § 1; 1925 c 15 § 4; RRS § 11337-4.]

60.68.050 Purpose—1925 c 15. This chapter is passed for the purpose of authorizing the filing of notices of liens in accordance with the provisions of *section 3186 of the Revised Statutes of the United States, as amended by the Act of March 4, 1913, 37 Statutes at Large, page 1016. [1925 c 15 § 5; RRS § 11337-5.]

*Reviser's note: *section 3186 of the Revised Statutes of the United States* now appears as U.S.C. Title 26, §§ 6321, 6322, and 6323.

Chapter 60.72

LANDLORD'S LIEN FOR RENT

Sections

60.72.010 Liens created—Priority—Extent—Exceptions.
60.72.040 Foreclosure of lien.

60.72.010 Liens created—Priority—Extent—Exceptions. Any person to whom rent may be due, his executors, administrators, or assigns, shall have a lien for such rent upon personal property which has been used or kept on the rented premises by the tenant, except property of third persons delivered to or left with

the tenant for storage, repair, manufacture, or sale, or under conditional bills of sale duly filed, and such property as is exempt from execution by law. Such liens for rent shall be paramount to, and have preference over, all other liens except liens for taxes, general and special liens of labor, and liens of mortgages duly recorded prior to the tenancy. Such liens shall not be for more than two months' rent due or to become due, nor for any rent or any installment thereof which has been due for more than two months at the time of the commencement of an action to foreclose such liens; no writing or recording shall be necessary to create such lien; and if such property be removed from the rented premises and not returned to the owner, agent, executor, administrator, or assign, said lien shall continue and be a superior lien on the property so removed for ten days from the date of its removal, and said lien may be enforced against the property wherever found. In the event the property contained in the rented premises be destroyed by fire or other elements, the lien shall extend to any money that may be received by the tenant as indemnity for the destruction of said property, nor shall the lien be lost by the sale of the said property, except merchandise sold in the usual course of trade or to purchasers without notice of the tenancy. The provisions of this chapter shall not apply to, nor shall it be enforced against, the property of tenants in dwelling houses or apartments or any other place that is used exclusively as a home or residence of the tenant and his family. [1927 c 108 § 1; 1917 c 165 § 1; RRS § 1203-1. Formerly RCW 60.72.010, 60.72.020, 60.72.030.]

60.72.040 Foreclosure of lien. Said lien may be foreclosed as provided in chapter 60.10 RCW and RCW 61.12.162. [1969 c 82 § 15; 1917 c 165 § 2; RRS § 1203-2.]

Foreclosure of chattel mortgages: Article 62A.9 RCW.

Chapter 60.76

LIEN OF EMPLOYEES FOR CONTRIBUTIONS TO BENEFIT PLANS

Sections

- 60.76.010 Lien authorized.
- 60.76.020 Notice of lien—Contents—Filing and serving.
- 60.76.030 Manner of serving notice.
- 60.76.040 Manner of enforcing lien—Costs.
- 60.76.050 Priority of lien.

60.76.010 Lien authorized. Every employer who is required to pay contributions, by agreement or otherwise, into a fund of any employee benefit plan in order that his employee may participate therein, shall pay such contributions in the required amounts and at the stipulated time or each employee affected thereby shall have a lien on the earnings and on all property used in the operation of said employer's business to the extent of the moneys, plus any penalties, due to be paid by or on his behalf in order to qualify him for participation therein, and for any moneys expended or obligations incurred for medical, hospital, or other expenses to which he would

have been entitled had such required contributions been paid. [1961 c 86 § 1.]

60.76.020 Notice of lien—Contents—Filing and serving. The lien claimant, or his representative on his behalf, or the trustee of the fund on the claimant's behalf, within sixty days after such payment becomes due shall file for record with the auditor of the county wherein the claimant is or was employed by such employer a notice of claim, containing a statement of the demand, the name of the employer and the name of the person employing the claimant, if known, with a statement of the pertinent terms and conditions of the employee benefit plan and the time when such contributions are due and were to have been paid, and shall serve or mail a copy thereof to said employer within such time. [1961 c 86 § 2.]

60.76.030 Manner of serving notice. Service of the notice of claim may be made in the same manner as summons in civil actions. [1961 c 86 § 3.]

60.76.040 Manner of enforcing lien—Costs. The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed when said lien is upon real property, or within the same time and in the same manner as chattel liens are enforced when the lien is upon personal property. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, a reasonable attorney's fee in the superior court, court of appeals, and supreme court, and court costs. [1971 c 81 § 130; 1961 c 86 § 4.]

60.76.050 Priority of lien. The lien created herein shall be preferred to any encumbrance which may attach after the contribution payments became due and is also preferred to any encumbrance which may have attached previous to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1961 c 86 § 5.]



Title 61

MORTGAGES, DEEDS OF TRUST, AND TRUST RECEIPTS

Chapters

- 61.12 Foreclosure of real estate mortgages and personal property liens.**
- 61.16 Assignment and satisfaction of real estate and chattel mortgages.**
- 61.24 Deeds of trust.**
- Banks, real estate holdings: RCW 30.04.210.*
- Chattel liens: Chapter 60.08 RCW.*
- Commission merchants: Title 20 RCW.*
- Consumer finance act: Chapter 31.08 RCW.*
- Corporate powers of banks and trust companies: RCW 30.08.140, 30.08.150.*
- Credit unions: Chapter 31.12 RCW.*
- Crop credit associations: Chapter 31.16 RCW.*
- Excise tax on real estate sales: Chapter 28A.45 RCW.*
- Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.*
- Fraudulent conveyances: Chapter 19.40 RCW.*
- Insurance companies, investments: Chapter 48.13 RCW.*
- Interest, usury: Chapter 19.52 RCW.*
- Joint tenancies: Chapter 64.28 RCW.*
- Liens: Title 60 RCW.*
- Motor vehicles, certificates of ownership: Chapter 46.12 RCW.*
- Mutual savings banks, investments: Chapter 32.20 RCW.*
- Mutual savings banks, powers and duties: Chapters 32.08, 32.12, 32.16 RCW.*
- Negotiable instruments: Title 62A RCW.*
- Possession of real property to collect mortgaged, pledged or assigned rents and profits: RCW 7.28.230.*
- Property taxes: Title 84 RCW.*
- Real estate brokers and salesmen: Chapter 18.85 RCW.*
- Real property and conveyances: Title 64 RCW.*
- Recording master form instruments and mortgages or deeds of trust incorporating master form provisions: RCW 65.08.160.*
- Recording mortgages: Title 65 RCW.*
- Retail installment sales of goods and services: Chapter 63.14 RCW.*
- Savings and loan associations, investments: Chapter 33.24 RCW.*
- Savings and loan associations, powers and duties: Chapter 33.12 RCW.*
- Statute of frauds: Chapter 19.36 RCW.*
- Suretyship: Chapter 19.72 RCW.*
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Chapter 61.12

FORECLOSURE OF REAL ESTATE MORTGAGES AND PERSONAL PROPERTY LIENS

Sections

- 61.12.010 Encumbrances shall be by deed.
- 61.12.020 Mortgage—Form—Contents—Effect.
- 61.12.030 Removal of property from mortgaged premises.
- 61.12.031 Removal of property from mortgaged premises—Penalty.
- 61.12.040 Foreclosure—Venue.

- 61.12.050 When remedy confined to mortgaged property.
- 61.12.060 Judgment—Order of sale—Satisfaction—Upset price.
- 61.12.061 Exception as to mortgages held by the United States.
- 61.12.070 Decree to direct deficiency—Waiver in complaint.
- 61.12.080 Deficiency judgment—How enforced.
- 61.12.090 Execution on decree—Procedure.
- 61.12.093 Abandoned improved real estate—Purchaser takes free of redemption rights.
- 61.12.094 Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service.
- 61.12.095 Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes.
- 61.12.100 Levy for deficiency under same execution.
- 61.12.110 Notice of sale on deficiency.
- 61.12.120 Concurrent actions prohibited.
- 61.12.130 Payment of sums due—Stay of proceedings.
- 61.12.140 Sale in parcels to pay installments due.
- 61.12.150 Sale of whole property—Disposition of proceeds.
- 61.12.162 Judicial foreclosure of personal property liens.
- 61.12.164 Judicial foreclosure of personal property liens—Redemption rights.
- 61.12.165 Judicial foreclosure of personal property liens—Rights and interest of purchaser for value.
- 61.12.170 Recording.
- Community realty, encumbering: RCW 26.16.040.*
- Corporate seals, effect of absence from instrument: RCW 64.04.105.*
- Decedent's estate, liability for mortgage lien: RCW 11.04.270.*
- Foreclosure by organizations not admitted to transact business in state: Chapter 23A.36 RCW.*
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- Mortgaging of decedent's estates: Chapter 11.56 RCW.*
- Notice and sale summary foreclosure of personal property liens: Chapter 60.10 RCW.*
- Partition, sales on credit: RCW 7.52.290, 7.52.420.*
- Possession of real estate to collect mortgaged rents and profits: RCW 7.28.230.*
- Receiver may be appointed to protect mortgagee's interest: RCW 7.60.020.*
- Sales under execution and redemption: Chapter 6.24 RCW.*

61.12.010 Encumbrances shall be by deed. See RCW 64.04.010.

61.12.020 Mortgage—Form—Contents—Effect. Mortgages of land may be made in substantially the following form: The mortgagor (here insert name or names) mortgages to (here insert name or names) to secure the payment of (here insert the nature and amount of indebtedness, showing when due, rate of interest, and whether evidenced by note, bond or other instrument or not) the following described real estate (here insert description) situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19__.

Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money

therein specified. The parties may insert in such mortgage any lawful agreement or condition. [1929 c 33 § 12; RRS § 10555. Prior: 1888 c 26 § 1; 1886 p 179 § 6.]

61.12.030 Removal of property from mortgaged premises. When any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant of such real estate to destroy or remove or to cause to be destroyed or removed from said real estate any fixtures, buildings, or permanent improvements, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his or their written consent for such removal or destruction. [1899 c 75 § 1; RRS § 2709, part. FORMER PART OF SECTION: 1899 c 75 § 2 now codified as RCW 61.12.031.]

61.12.031 Removal of property from mortgaged premises—Penalty. Any person wilfully violating the provisions of RCW 61.12.030 shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. [1899 c 75 § 2; RRS § 2709, part. Formerly RCW 61.12.030, part.]

61.12.040 Foreclosure—Venue. When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the superior court of the county where the land, or some part thereof, lies, to foreclose the equity of redemption contained in the mortgage. [Code 1881 § 609; 1877 p 127 § 614; 1869 p 145 § 563; 1854 p 207 § 408; RRS § 1116.]

Real property, actions concerning to be brought where property is located: RCW 4.12.010.

61.12.050 When remedy confined to mortgaged property. When there is no express agreement in the mortgage nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged. [Code 1881 § 610; 1877 p 127 § 615; 1869 p 146 § 564; 1854 p 207 § 409; RRS § 1117.]

61.12.060 Judgment—Order of sale—Satisfaction—Upset price. In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment. The court, in ordering the sale, may in its discretion, take judicial notice of economic conditions, and after a proper hearing, fix a minimum or upset price to which the mortgaged premises must be bid or sold before confirmation of the sale.

The court may, upon application for the confirmation of a sale, if it has not theretofore fixed an upset price,

conduct a hearing, establish the value of the property, and, as a condition to confirmation, require that the fair value of the property be credited upon the foreclosure judgment. If an upset price has been established, the plaintiff may be required to credit this amount upon the judgment as a condition to confirmation. If the fair value as found by the court, when applied to the mortgage debt, discharges it, no deficiency judgment shall be granted. [1935 c 125 § 1; Code 1881 § 611; 1877 p 127 § 616; 1869 p 146 § 565; 1854 p 207 § 410; RRS § 1118. FORMER PART OF SECTION: 1935 c 125 § 1 1/2 now codified as RCW 61.12.061.]

Confirmation of sale of land: RCW 6.24.100.

61.12.061 Exception as to mortgages held by the United States. The provisions of *this act shall not apply to any mortgage while such mortgage is held by the United States or by any agency, department, bureau, board or commission thereof as security or pledge of the maker, its successors or assigns. [1935 c 125 § 1 1/2; RRS § 1118–1. Formerly RCW 61.12.060, part.]

**Reviser's note: "this act" appears in 1935 c 125 § 1 1/2; section 1 of the 1935 act amends Code 1881 § 611; the 1935 act is codified as RCW 61.12.060 and 61.12.061.*

61.12.070 Decree to direct deficiency—Waiver in complaint. When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor: *Provided, however,* That in all cases where the mortgagee or other owner of such mortgage has expressly waived any right to a deficiency judgment in the complaint, as provided by RCW 6.24.140, there shall be no such judgment for deficiency, and the remedy of the mortgagee or other owner of the mortgage shall be confined to the sale of the property mortgaged. [1961 c 196 § 4; Code 1881 § 612; 1877 p 127 § 617; 1869 p 146 § 566; 1854 p 208 § 411; RRS § 1119.]

61.12.080 Deficiency judgment—How enforced. Judgments over for any deficiency remaining unsatisfied after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor as other judgments, and the collections thereof enforced in the same manner. [Code 1881 § 622; 1877 p 129 § 625; 1869 p 148 § 575; RRS § 1120.]

Enforcement of judgments: Title 6 RCW.

61.12.090 Execution on decree—Procedure. A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall endorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed

to sell such property, or so much thereof as may be necessary to satisfy the judgment, interest and costs upon giving the notice prescribed in RCW 6.24.010. [1899 c 53 § 1; RRS § 1121. Cf. Code 1881 § 613; 1869 p 146 § 567; 1854 p 208 § 412.]

Property exempt from execution and attachment: RCW 6.16.020.

61.12.093 Abandoned improved real estate—Purchaser takes free of redemption rights. In actions to foreclose mortgages on real property improved by structure or structures, if the court finds that the mortgagor or his successor in interest has abandoned said property for six months or more, the purchaser at the sheriff's sale shall take title in and to such property free from all redemption rights as provided for in RCW 6.24.130 et seq. upon confirmation of the sheriff's sale by the court. Lack of occupancy by, or by authority of, the mortgagor or his successor in interest for a continuous period of six months or more prior to the date of the decree of foreclosure, coupled with failure to make payment upon the mortgage obligation within the said six month period, will be prima facie evidence of abandonment. [1965 c 80 § 1; 1963 c 34 § 1.]

Doed to issue upon request immediately after confirmation of sale: RCW 6.24.220.

61.12.094 Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service. When proceeding under RCW 61.12.093 through 61.12.095 no deficiency judgment shall be allowed. No mortgagee shall deprive any mortgagor, his successors in interest, or any redemptioner of redemption rights by default decree without alleging such intention in the complaint: *Provided, however,* That such complaint need not be served upon any person who acquired the status of such successor in interest or redemptioner after the recording of lis pendens in such foreclosure action. [1965 c 80 § 2; 1963 c 34 § 2.]

61.12.095 Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes. RCW 61.12.093 and 61.12.094 shall not apply to property used primarily for agricultural purposes. [1965 c 80 § 3; 1963 c 34 § 3.]

61.12.100 Levy for deficiency under same execution. In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor may be made under the same execution. In such sales it shall only be necessary to advertise notice for two weeks in a newspaper published in the county where the said property is located, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in such county. [Code 1881 § 620; 1877 p 129 § 623; 1873 p 151 § 571; 1869 p 148 § 573; RRS § 1123.]

61.12.110 Notice of sale on deficiency. When sales of other property not embraced in the mortgage or decree of sale are made under the execution to satisfy any deficiency remaining due upon judgment, two weeks' publication of notice of such sale shall be sufficient. Such notice shall be published in a newspaper printed in the county where the property is situated, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in said county. [Code 1881 § 621; 1877 p 129 § 624; 1869 p 148 § 574; RRS § 1124.]

Notice of sales under execution: RCW 6.24.010.

61.12.120 Concurrent actions prohibited. The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure. [Code 1881 § 614; 1877 p 128 § 619; 1869 p 146 § 568; 1854 p 208 § 413; RRS § 1125.]

61.12.130 Payment of sums due—Stay of proceedings. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into the court the principal and interest due, with costs, at any time before the final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue. [Code 1881 § 615; 1877 p 128 § 620; 1869 p 147 § 569; 1854 p 208 § 414; RRS § 1126.]

61.12.140 Sale in parcels to pay installments due. In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the court shall direct so much only of the premises to be sold, as will be sufficient to pay the amount then due on the mortgage with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected. [Code 1881 § 616; 1877 p 128 § 620 (2d of 2 sections with same number); 1869 p 147 § 570; 1854 p 208 § 415; RRS § 1127.]

61.12.150 Sale of whole property—Disposition of proceeds. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue does not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the

surplus shall be paid to the mortgage debtor, his heirs and assigns. [Code 1881 § 617; 1877 p 128 § 621; 1869 p 147 § 571; 1854 p 208 § 416; RRS § 1128.]

61.12.162 Judicial foreclosure of personal property liens. The provisions of chapter 61.12 RCW, as now or hereafter amended, so far as the same shall be applicable, shall govern in actions for the judicial foreclosure of liens on personal property excluded by RCW 62A.9-104 from the provision of the Uniform Commercial Code, Title 62A RCW. The lien holder may proceed upon his lien; and if there be a separate obligation in writing to pay the same, secured by said lien, he may bring suit upon such separate promise. When he proceeds on the promise, if there be a specific agreement therein contained, for the payment of a certain sum, or there is a separate obligation for the said sum in addition to a decree of sale of lien property, judgment shall be rendered for the amount due upon said promise or other instrument, the payment of which is thereby secured; the decree shall direct the sale of the lien property and if the proceeds of said sale be insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied. [1969 c 82 § 1.]

Notice and sale summary procedure for foreclosure of personal property liens: Chapter 60.10 RCW.

61.12.164 Judicial foreclosure of personal property liens—Redemption rights. See RCW 60.10.050.

61.12.165 Judicial foreclosure of personal property liens—Rights and interest of purchaser for value. See RCW 60.10.040.

61.12.170 Recording. See chapter 65.08 RCW.

Chapter 61.16

ASSIGNMENT AND SATISFACTION OF REAL ESTATE AND CHATTEL MORTGAGES

Sections

61.16.010	Assignments, how made—Satisfaction by assignee.
61.16.020	Mortgages, how satisfied of record.
61.16.030	Failure to satisfy—Order—Penalty.
61.16.060	Chattel mortgages and conditional sales contracts—Agent may satisfy.

Effect of recording assignment of mortgage: RCW 65.08.120.

61.16.010 Assignments, how made—Satisfaction by assignee. Any person to whom any real estate or chattel mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, by him signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and

discharge the same of record. [1897 c 23 § 1; RRS § 10616.]

Validating—1897 c 23: "All satisfactions of mortgages heretofore made by the assignees thereof, where the assignment was in writing, signed by the mortgagee or assignee, and where the same was recorded in the office of the auditor of the county wherein the mortgage was recorded, are hereby validated, and such satisfactions of mortgages so made shall have the same effect as if made by the mortgagees in such mortgages." [1897 c 23 § 2.]

61.16.020 Mortgages, how satisfied of record. Whenever the amount due on any mortgage is paid, the mortgagee, his legal representatives or assigns, shall, at the request of any person interested in the property mortgaged, acknowledge satisfaction of the same on the margin of the page upon which the mortgage is recorded (which marginal satisfaction shall be at the time attested by the auditor or his deputy), or by executing an instrument in writing referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction. [1901 c 52 § 1; 1886 p 116 § 1; RRS § 10614.]

61.16.030 Failure to satisfy—Order—Penalty. If the mortgagee shall fail so to do after sixty days from the date of such request or demand, he shall forfeit and pay to the mortgagor the sum of twenty-five dollars, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to cancel said mortgage, and the auditor shall immediately record the order and cancel the mortgage as directed by the court, upon the margin of the page upon which the mortgage is recorded, making reference thereupon to the order of the court and to the page where the order is recorded. [1886 p 117 § 2; RRS § 10615.]

61.16.060 Chattel mortgages and conditional sales contracts—Agent may satisfy. A mortgagee, vendor, or assignee or his personal representative of record may, by written instrument duly acknowledged, designate an agent to satisfy or release any mortgage or contract of conditional sale; and upon the filing of such instrument with the county auditor, such auditor shall be authorized to treat a satisfaction or release by such named agent as valid. Revocation of the power of an agent to satisfy or release may be accomplished by written instrument in a like manner. [1937 c 133 § 2 (adding to 1899 c 98 a new section, § 10); RRS § 3787-2.]

Chapter 61.24
DEEDS OF TRUST

Sections	
61.24.010	"Record", "recorded" defined—Trustee, qualifications—Successor trustee.
61.24.020	Deed may be foreclosed as provided in this chapter—Recording and indexing—Trustee and beneficiary, separate entities, exception.
61.24.030	Requisites to foreclosure.
61.24.040	Foreclosure and sale—Notice of sale.
61.24.050	Interest conveyed by trustee's deed—Redemption precluded after sale.
61.24.060	Rights and remedies of trustee's sale purchaser.
61.24.070	Trustee's sale, who may bid at.
61.24.080	Disposition of proceeds of sale.
61.24.090	Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment.
61.24.100	Deficiency decree precluded in foreclosure under this chapter—Enforcement of security and obligation where foreclosure not made under this chapter.
61.24.110	Reconveyance by trustee.
61.24.120	Other foreclosure provisions preserved.
61.24.130	Restraint of threatened sale by trustee.

Possession of real property by trustee of deed of trust to collect rents and profits: RCW 7.28.230.

61.24.010 "Record", "recorded" defined—Trustee, qualifications—Successor trustee. (1) The terms "record" and "recorded" as used in this chapter, shall include the appropriate registration proceedings, in the instance of registered land.

(2) The trustee of a deed of trust under this chapter shall be:

(a) Any corporation or association authorized to engage in a trust business in this state; or

(b) Any title insurance company authorized to insure title to real property under the laws of this state, or its agents; or

(c) Any attorney who is an active member of the Washington state bar association at the time he is named trustee.

(d) Any agency of the United States government.

(3) In the event of the death, incapacity or disability, or resignation of the trustee, the beneficiary may nominate in writing a successor trustee. Upon recording in the mortgage records of the county or counties in which the trust deed is recorded, of the appointment of a successor trustee, the successor trustee shall be vested with all powers of the original trustee. [1975 1st ex.s. c 129 § 1; 1965 c 74 § 1.]

61.24.020 Deed may be foreclosed as provided in this chapter—Recording and indexing—Trustee and beneficiary, separate entities, exception. A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be foreclosed as in this chapter provided. The county auditor shall record such deed as a mortgage and shall index the name of the grantor as mortgagor and the names of the trustee and beneficiary as mortgagee. No person, corporation or association may be both trustee and beneficiary under the same deed of trust: *Provided*, That any agency of the United States government may be both trustee and beneficiary under

the same deed of trust. [1975 1st ex.s. c 129 § 2; 1965 c 74 § 2.]

61.24.030 Requisites to foreclosure. It shall be requisite, to foreclosure under this chapter:

(1) That the deed of trust contains a power of sale;

(2) That the deed of trust provides in its terms that the real property conveyed is not used principally for agricultural or farming purposes;

(3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;

(4) That no action is pending on an obligation secured by the deed of trust;

(5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated; and

(6) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the grantor or any successor in interest at his last known address by both first class and certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on said premises, a copy of said notice, or personally served on the grantor or his successor in interest. This notice shall contain the following information:

(a) A description of the property which is then subject to the deed of trust;

(b) The book and the page of the book of records wherein the deed of trust is recorded;

(c) That the beneficiary has declared the grantor or any successor in interest to be in default, and a concise statement of the default alleged;

(d) An itemized account of the amount or amounts in arrears if the default alleged is failure to make payments;

(e) An itemized account of all other specific charges, costs or fees that the grantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;

(f) The total of subparagraphs (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;

(g) That failure to cure said alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal and publication of a notice of sale, and that the property described in subparagraph (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future;

(h) That the effect of the recordation, transmittal and publication of a notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the grantor's property for sale;

(i) That the effect of the sale of the grantor's property by the trustee will be to deprive the grantor or his successor in interest and all those who hold by, through or under him of all their interest in the property described in subsection (a);

(j) That the grantor or any successor in interest has recourse to the courts to contest the alleged default on any proper ground. [1975 1st ex.s. c 129 § 3; 1965 c 74 § 3.]

61.24.040 Foreclosure and sale—Notice of sale. A deed of trust may be foreclosed in the following manner:

(1) At least ninety days before the sale, the trustee shall:

(a) Record a notice in the form hereinafter specified in RCW 61.24.040(1)(f) in the office of the auditor in each county in which the deed of trust is recorded;

(b) Cause a copy of the notice as hereinafter provided in RCW 61.24.040(1)(f), to be transmitted by both first class and certified mail, return receipt requested, to each person who has an interest in or lien or claim of lien against the property or some part thereof, provided such interest, lien or claim is of record at the time the notice is recorded and further provided the address of such person is stated in the recorded instrument recording his interest, lien or claim, or is otherwise known to the trustee;

(c) Cause a copy of the notice as hereinafter provided in RCW 61.24.040(1)(f) to be transmitted by both first class and certified mail, return receipt requested, to the plaintiff or his attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is on file on the date the notice is recorded in the office of the auditor;

(d) Cause a copy of the notice as hereinafter provided in RCW 61.24.040(1)(f) to be transmitted by both first class and certified mail, return receipt requested, to any person who shall have requested such notice in writing to the trustee at the address specified by the requesting person;

(e) Cause a copy of the notice as hereinafter provided in RCW 61.24.040(1)(f) to be posted in a conspicuous place on said premises, or in lieu of posting, cause a copy of said notice to be served upon any occupant of said real property;

(f) The notice shall be in the following form:

NOTICE OF TRUSTEE'S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned trustee will on the _____ day of _____, 19___, at the hour of _____ o'clock _____ M. at _____

_____ [street address and location if inside a building] in the City of _____, State of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County of _____, State of Washington, to-wit:

which is subject to that certain deed of trust dated _____, 19___, recorded _____, 19___, in volume _____ of Mortgages, at Page _____, under Auditor's File No. _____, mortgage records of _____ County, Washington, from _____, as Grantor, to _____, as Trustee, to secure an obligation in favor of _____, as Beneficiary, the beneficial interest in which was assigned by _____, under an Assignment dated _____, 19___, and recorded under Auditor's File No. _____.

II.

No action is now pending to seek satisfaction of the obligation in any Court by reason of the Grantor's default on the obligation secured by said deed of trust.

III.

The default for which this foreclosure is made is as follows:

[If default is for other than payment of money, set forth the particulars]

Failure to pay when due the following amounts which are now in arrears:

IV.

The sum owing on the obligation secured by the deed of trust is: Principal \$_____, together with interest as in the note provided from the _____ day of _____, 19___, and such other costs and fees as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by said Deed of Trust as provided by statute. Said sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the _____ day of _____, 19___ The defaults referred to in paragraph III must be cured by the _____ day of _____, 19___, (10 days before the sale) to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before the _____ day of _____, 19___, (10 days before the sale) the default as set forth in paragraph III is cured and the Trustee's fees and costs are paid. The sale may be terminated by the grantor anytime after the _____ day of _____, 19___, (10 days before the sale) and before the sale by the grantor or his successor in interest paying the principal and interest plus costs and fees.

VI.

A written notice of default was transmitted by the Beneficiary or trustee to the grantor or his successor in interest at the following address:

by both first class and certified mail on the ----- day of -----, 19--, proof of which is in the possession of the trustee; or the grantor or his successor in interest was personally served on the ----- day of -----, 19--, with said written notice of default by the beneficiary or his trustee, and the trustee has in his possession proof of such service.

VII.

The Trustee whose name and address is set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the grantor and all those who hold by, through or under him of all their interest in the above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the trustee's sale.

----- } Trustee
----- } Address
----- } Phone

STATE OF WASHINGTON }
COUNTY OF } ss.

On this day personally appeared before me -----, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this ----- day of -----, 19--.

NOTARY PUBLIC in and for the State of Washington, residing at -----

[SEAL]

(2) In addition to providing the grantor or his successor in interest the notice as provided in RCW 61.24.040(1)(f), the trustee shall include with the notice provided in RCW 61.24.040(1)(f) a statement to the

grantor or his successor in interest in substantially the following form:

NOTICE OF FORECLOSURE
Pursuant to the Revised Code of Washington, Chapter 61.24 RCW, et seq.

The attached Notice of Sale is a consequence of your default in your obligation to -----, the beneficiary of your Deed of Trust and holder of your Note. Unless you cure the default, your property will be sold at auction on the ----- day of -----, 19--.

To cure your default, you must bring your payments current and pay accrued late charges and other costs and attorneys fees as set forth below by the ----- day of -----, 19-- (10 days before sale date). To date, these arrears and costs are as follows:

Table with columns: Currently due to reinstate [date], Amount that will be due to reinstate in 40 days [date], Amount that will be due to reinstate in 80 days [date]. Rows include: Delinquent payments from the 1st day of -----, 19--, in the amount of: \$-----; Late charge for every delinquent dollar owed in the amount of: \$-----; Attorneys fees in the amount of: \$-----; Trustee's expenses in the amount of: [Itemization] Estimated Costs Estimated Costs; TOTALS

You may reinstate your Note and Deed of Trust at any time up to the _____ day of _____, 19__ (10 days before the sale date) by paying the amount as set forth above. Of course, each month that passes brings another monthly payment due, and such monthly payment and any late charge must be added to your reinstating payment. AFTER THE _____ DAY OF _____, 19__, (THE 80TH DAY), YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AS OUTLINED ABOVE. In such a case, you will only be able to stop the sale by paying the total principal balance (\$_____) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents.

You may contest this default by initiating court action in the Superior Court of _____ County. In such action, you may raise any legitimate defenses you have to this default. You may also contest this sale in court by initiating court action. A copy of your Note and Deed of Trust are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense.

If you do not reinstate your Note and Deed of Trust by paying the amount demanded here, or if you do not succeed in restraining the sale by court action, your property will be sold to satisfy your obligations. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

(3) In addition the trustee shall cause a copy of the notice as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once weekly during the four weeks preceding the time of sale;

(4) On the date and at the time designated in the notice of sale, the trustee shall sell the property at public auction to the highest bidder. The trustee may sell the property in gross or in parcels as the trustee shall deem most advantageous;

(5) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in either of the counties where the property is located. The sale shall be on the day and during the hours set by statute for the conduct of sales of real estate at execution;

(6) The trustee may for any cause he deems advantageous continue the sale for a period or periods not exceeding a total of thirty days by a public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given;

(7) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value;

(8) The sale as authorized under this chapter shall not take place less than one hundred ninety days from the date of default in the obligation secured. [1975 1st ex.s. c 129 § 4; 1967 c 30 § 1; 1965 c 74 § 4.]

61.24.050 Interest conveyed by trustee's deed—Redemption precluded after sale. The deed of the trustee, executed to the purchaser, shall convey the interest in the property which the grantor had or had the power to convey at the time of the execution by him of the deed of trust, and such as he may have thereafter acquired. After sale, as in this chapter provided, no person shall have any right by statute or otherwise to redeem from the deed of trust or from the sale. [1965 c 74 § 5.]

61.24.060 Rights and remedies of trustee's sale purchaser. The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the grantor under the deed of trust or anyone claiming through him, and shall have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW. [1967 c 30 § 2; 1965 c 74 § 6.]

61.24.070 Trustee's sale, who may bid at. The trustee may not bid at the trustee's sale. Any other person including the beneficiary under the deed of trust may bid at the trustee's sale. [1965 c 74 § 7.]

61.24.080 Disposition of proceeds of sale. The trustee shall apply the proceeds of the sale as follows:

(1) To the expense of sale, including a reasonable charge by the trustee and by his attorney: *Provided*, That the aggregate of the charges by the trustee and his attorney, for their services in the sale, shall not exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney fee, had the trust deed been foreclosed as a mortgage in a noncontested action in the said court;

(2) To the obligation secured by the deed of trust; and

(3) The surplus, if any, less the clerk's filing fee may be deposited together with a copy of the recorded notice of sale with the clerk of the superior court of the county in which the sale took place. The clerk shall index such funds under the name of the grantor as set out in the recorded notice. Upon depositing such surplus, the trustee shall be discharged from all further responsibilities therefor. Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to such surplus in the order of priority that it had attached to the property. The clerk shall not disburse such surplus except upon order of the superior court of such county. [1967 c 30 § 3; 1965 c 74 § 8.]

61.24.090 Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment. (1) At any time prior to the tenth day before the date set by the trustee for the sale in the recorded notice of sale, or in the event the trustee continues the sale pursuant to RCW 61.24.040(6), at any time prior to the tenth day

before the actual sale, the grantor or his successor in interest, any beneficiary under a subordinate deed of trust or any person having a subordinate lien or encumbrance of record on the trust property or any part thereof, shall be entitled to cause a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice, which in the case of a default by failure to pay, shall be by paying to the trustee:

(a) The entire amount then due under the terms of the deed of trust and the obligation secured thereby, other than such portion of the principal as would not then be due had no default occurred, and

(b) The expenses actually incurred by the trustee enforcing the terms of the note and deed of trust, including a reasonable trustee's fee, which is not to exceed twenty-five dollars at the time the notice of trustee's sale is given and is not to exceed fifty dollars forty days after the date of notice of trustee's sale is given and is not to exceed seventy-five dollars eighty days after the date of notice of trustee's sale is given, together with the trustee's reasonable attorney's fees, together with costs of recording the notice of discontinuance of notice of trustee's sale. In the event the property secured by the deed of trust is a single family dwelling the total of the trustee's fees and the attorney's fees shall not exceed two hundred fifty dollars without court approval.

(2) Upon receipt of such payment the proceedings shall be discontinued, the deed of trust shall be reinstated and the obligation shall remain as though no acceleration had taken place.

(3) In the case of a default which is occasioned by other than failure to make payments, the person or persons causing the said default shall pay the expenses incurred by the trustee and the trustee's fees as set forth in subsection (1)(b) of this section.

(4) Any person having a subordinate lien of record on the trust property and who has cured the default or defaults pursuant to this section shall thereafter have included in his lien all payments made to cure any defaults, including interest thereon at eight percent per annum, payments made for trustees' costs and fees incurred as authorized herein, and his reasonable attorney's fees and costs incurred resulting from any judicial action commenced to enforce his rights to advances under this section.

(5) If the default is cured and the obligation and the deed of trust reinstated in the manner hereinabove provided, the trustee shall properly execute, acknowledge and cause to be recorded a notice of discontinuance of trustee's sale under such deed of trust. A notice of discontinuance of trustee's sale when so executed and acknowledged is entitled to be recorded and shall be sufficient if it sets RCW 61.24.040(6), at any time prior to the tenth which the deed of trust is recorded and a reference to the notice of sale and the book and page on which the name is recorded, and a notice that such sale is discontinued. [1975 1st ex.s. c 129 § 5; 1967 c 30 § 4; 1965 c 74 § 9.]

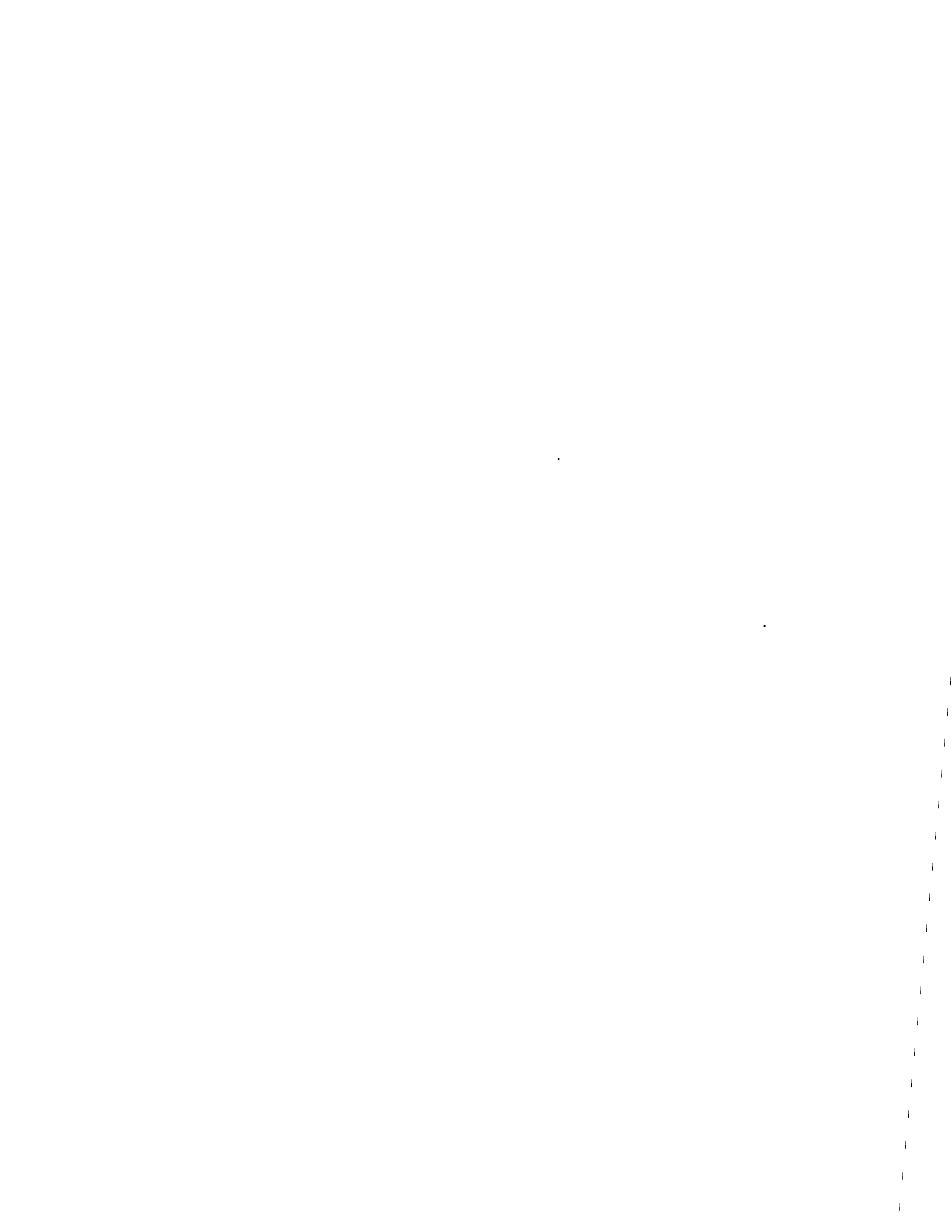
61.24.100 Deficiency decree precluded in foreclosure under this chapter—Enforcement of security and obligation where foreclosure not made under this chapter.

Foreclosure, as in this chapter provided, shall satisfy the obligation secured by the deed of trust foreclosed, regardless of the sale price or fair value, and no deficiency decree or other judgment shall thereafter be obtained on such obligation. Where foreclosure is not made under this chapter, the beneficiary shall not be precluded from enforcing the security as a mortgage nor from enforcing the obligation by any means provided by law. [1965 c 74 § 10.]

61.24.110 Reconveyance by trustee. The trustee shall reconvey all or any part of the property covered by the deed of trust to the person entitled thereto on written request of the grantor and the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto. [1965 c 74 § 11.]

61.24.120 Other foreclosure provisions preserved. This chapter shall not supersede nor repeal any other provision now made by law for the foreclosure of security interests in real property. [1965 c 74 § 12.]

61.24.130 Restraint of threatened sale by trustee. Nothing contained in this chapter shall prejudice the right of the grantor or his successor in interest to restrain, on any proper ground, a threatened sale by the trustee under a deed of trust. In the event that the property secured by the deed of trust is a single family dwelling occupied by the grantor or his successor in interest, and the court finds that there is proper ground to restrain a threatened sale by the trustee under a deed of trust, the court shall require the grantor or his successor in interest to enter into a bond in the amount of two hundred fifty dollars with surety to the satisfaction of the clerk of the superior court to the adverse party affected thereby, conditioned to pay all damages and costs which may accrue by reason of the injunction or restraining order. In addition, the court shall require as a condition of continuing the restraining order that the grantor or his successors in interest shall pay to the clerk of the court every thirty days the monthly payment of principal and interest that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed. [1975 1st ex.s. c 129 § 6; 1965 c 74 § 13.]



Title 62

NEGOTIABLE INSTRUMENTS

Reviser's Note: Repealed and superseded by Title 62A RCW Uniform Commercial Code. A comparative table may be found in the Table of Disposition of Former RCW Sections.

Title 62A

UNIFORM COMMERCIAL CODE

Articles

- 1** **General provisions.**
- 2** **Sales.**
- 3** **Commercial paper.**
- 4** **Bank deposits and collections.**
- 5** **Letters of credit.**
- 6** **Bulk transfers.**
- 7** **Warehouse receipts, bills of lading and
 other documents of title.**
- 8** **Investment securities.**
- 9** **Secured transactions; sales of accounts,
 contract rights and chattel paper.**
- 10** **Effective date and repealer.**

Reviser's note: The Uniform Commercial Code was enacted by 1965 ex.s. c 157 and became effective at midnight on June 30, 1967.

The style of the numbers assigned in the Commercial Code differs from the standard RCW numbering system. The purpose of this variance is to enable ready comparison with the laws and annotations of other states which have adopted the Uniform Commercial Code and to conform to the recommendations of the National Commissioners on Uniform Laws.

As enacted by the Washington Legislature, the Uniform Commercial Code is divided into ten Articles, which are subdivided into a number of Parts. The first section in Article 1, Part 1 of the Commercial Code is numbered 1-101, the second section in Article 1, Part 1 is numbered 1-102, the first section in Article 1, Part 2 is numbered 1-201, the first section in Article 2, Part 1 is numbered 2-101, etc.

We have assigned Title 62A RCW for the Uniform Commercial Code but have retained its uniform numbering; thus in this title, section 1-101 of the Commercial Code becomes RCW 62A.1-101; section 1-102 becomes RCW 62A.1-102; section 1-201 becomes RCW 62A.1-201; section 2-101 becomes RCW 62A.2-101, and so on.

Cashing checks for state officers and employees—Discretionary—Conditions—Procedure upon dishonor: RCW 43.08.180.

Immunity from implied warranties and civil liability relating to blood, plasma, and blood derivative—Scope—Effective date: RCW 70.54.120.

Motor vehicle certificate of ownership, transfer, perfection of security interest, etc.: Chapter 46.12 RCW.

Article 1 GENERAL PROVISIONS

Sections

- | PART 1
SHORT TITLE, CONSTRUCTION, APPLICATION AND
SUBJECT MATTER OF THE TITLE | |
|---|--|
| 62A.1-101 | Short title. |
| 62A.1-102 | Purposes; rules of construction; variation by agreement. |
| 62A.1-103 | Supplementary general principles of law applicable. |
| 62A.1-104 | Construction against implicit repeal. |
| 62A.1-105 | Territorial application of the title; parties' power to choose applicable law. |
| 62A.1-106 | Remedies to be liberally administered. |
| 62A.1-107 | Waiver or renunciation of claim or right after breach. |
| 62A.1-108 | Severability. |
| 62A.1-109 | Section captions. |

PART 2 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

- | | |
|-----------|---|
| 62A.1-201 | General definitions. |
| 62A.1-202 | Prima facie evidence by third party documents. |
| 62A.1-203 | Obligation of good faith. |
| 62A.1-204 | Time; reasonable time; "seasonably". |
| 62A.1-205 | Course of dealing and usage of trade. |
| 62A.1-206 | Statute of frauds for kinds of personal property not otherwise covered. |
| 62A.1-207 | Performance or acceptance under reservation of rights. |
| 62A.1-208 | Option to accelerate at will. |

ARTICLE 1 GENERAL PROVISIONS

PART 1 SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

62A.1-101 Short title. This Title shall be known and may be cited as Uniform Commercial Code. [1965 ex.s. c 157 § 1-101.]

62A.1-102 Purposes; rules of construction; variation by agreement. (1) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Title are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this Title may be varied by agreement, except as otherwise provided in this Title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Title of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Title unless the context otherwise requires

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates

words of the neuter gender may refer to any gender. [1965 ex.s. c 157 § 1-102. Cf. former RCW sections: (i) RCW 22.04.580; 1913 c 99 § 57; RRS § 3643. (ii) RCW 23.80.190; 1939 c 100 § 19; RRS § 3803-119. (iii) RCW 63.04.745; 1925 ex.s. c 142 § 74; RRS § 5836-74; formerly RCW 63.04.770. (iv) RCW 81.32.521; 1961 c 14 § 81.32.521; prior: 1915 c 159 § 52; RRS § 3698; formerly RCW 81.32.610.]

Code to be liberally construed: RCW 1.12.010.

Number and gender—Interpretation: RCW 1.12.050.

62A.1-103 Supplementary general principles of law applicable. Unless displaced by the particular provisions of this Title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. [1965 ex.s. c 157 § 1-103. Cf. former RCW sections: (i) RCW 22.04.570; 1913 c 99 § 56; RRS § 3642. (ii) RCW 23.80.180; 1939 c 100 § 18; RRS § 3803-118; formerly RCW 23.20.190. (iii) RCW 62.01.196; 1955 c 35 § 196; RRS § 3586. (iv) RCW 63.04.030; 1925 ex.s. c 142 § 2; RRS § 5836-2. (v) RCW 81.32.511; 1961 c 14 § 81.32.511; prior: 1915 c 159 § 51; RRS § 3697; formerly RCW 81.32.600.]

Application of common law: RCW 4.04.010.

62A.1-104 Construction against implicit repeal. This Title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [1965 ex.s. c 157 § 1-104.]

62A.1-105 Territorial application of the title; parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Bulk transfers subject to the Article on Bulk Transfers. RCW 62A.6-102.

Applicability of the Article on Investment Securities. RCW 62A.8-106.

Policy and scope of the Article on Secured Transactions. RCW 62A.9-102 and RCW 62A.9-103. [1965 ex.s. c 157 § 1-105.]

62A.1-106 Remedies to be liberally administered. (1) The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect. [1965 ex.s. c 157 § 1-106. Cf. former: RCW 63.04.730; 1925 ex.s. c 142 § 72; RRS § 5836-72.]

62A.1-107 Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1965 ex.s. c 157 § 1-107. Cf. former RCW sections: (i) RCW 62.01.119(3); 1955 c 35 § 62.01.119; prior: 1899 c 149 § 119; RRS § 3509. (ii) RCW 62.01.120(2); 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510. (iii) RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

62A.1-108 Severability. If any provision or clause of this Title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable. [1965 ex.s. c 157 § 1-108. Cf. former RCW 62.98.030; 1955 c 35 § 62.98.030.]

62A.1-109 Section captions. Section captions are parts of this Title. [1965 ex.s. c 157 § 1-109. Cf. former RCW 62.98.020; 1955 c 35 § 62.98.020.]

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

62A.1-201 General definitions. Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a

bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when (a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if

it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (RCW 62A.2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-208 and RCW 62A.4-209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, type-writing or any other intentional reduction to tangible form. [1965 ex.s. c 157 § 1-201.]

Reviser's note: This table indicates the latest comparable former Washington sources of the material contained in the various subsections of RCW 62A.1-201. Complete histories of the former sections are carried in the Revised Code of Washington Disposition Tables.

<i>Herein Subd.</i>	<i>Compare Former</i>
(1)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(2)	None
(3)	None
(4)	RCW:(i) 30.52.010 (ii) 62.01.191
(5)	RCW 62.01.191
(6)	RCW 81.32.011 ¹
(7)	None
(8)	None
(9)	RCW 61.20.010
(10)	None
(11)	RCW:(i) 63.04.040

<i>Herein Subd.</i>	<i>Compare Former</i>
	(ii) 63.04.720
(12)	None
(13)	RCW 63.04.755(1)
(14)	RCW:(i) 22.04.585(1)
	(ii) 62.01.191
	(iii) 63.04.755(1)
	(iv) 81.32.531(1)
(15)	RCW 63.04.755(1)
(16)	RCW 63.04.755(1)
(17)	RCW:(i) 22.04.585(1)
	(ii) 63.04.060
	(iii) 63.04.070
	(iv) 63.04.755(1)
(18)	None
(19)	RCW:(i) 22.04.585(2)
	(ii) 23.80.220(2)
	(iii) 63.04.755(2)
	(iv) 81.32.531(2)
(20)	RCW:(i) 22.04.585(1)
	(ii) 62.01.191
	(iii) 81.32.531(1)
(21)	None
(22)	None
(23)	RCW 63.04.755(3)
(24)	RCW 62.01.006(5)
(25)	RCW 62.01.056
(26)	None
(27)	None
(28)	RCW:(i) 22.04.585(1)
	(ii) 23.80.220(1)
	(iii) 61.20.010
	(iv) 62.01.191
	(v) 63.04.755(1)
	(vi) 81.32.531(1)
(29)	None
(30)	RCW:(i) 22.04.585(1)
	(ii) 23.80.220(1)
	(iii) 61.20.010
	(iv) 62.01.191
	(v) 63.04.755(1)
	(vi) 81.32.531(1)
(31)	None
(32)	RCW:(i) 22.04.585(1)
	(ii) 23.80.220(1)
	(iii) 61.20.010
	(iv) 63.04.755(1)
	(v) 81.32.531(1)
(33)	RCW:(i) 22.04.585(1)
	(ii) 23.80.220(1)
	(iii) 61.20.010
	(iv) 63.04.755(1)
	(v) 81.32.531(1)
(34)	None
(35)	None
(36)	None
(37)	RCW 61.20.010
(38)	None
(39)	None
(40)	None
(41)	None
(42)	None
(43)	None
(44)	RCW:(i) 22.04.585(1)
	(ii) 23.80.220(1)
	(iii) 61.20.010
	(iv) 62.01.025
	(v) 62.01.026
	(vi) 62.01.027
	(vii) 62.01.191
	(viii) 63.04.755(1)
	(ix) 81.32.531(1)
(45)	RCW:(i) 22.04.020
	(ii) 63.04.755(1)
(46)	RCW 62.01.191

¹The repeal of RCW sections 81.32.010 through 81.32.561 ". . . shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050)." Section 10-102(a)(xvii), c 157, Laws of 1965 ex.s.

Definitions—Uniform Act for Simplification of Fiduciary Security Transfer: RCW 21.17.010.

62A.1-202 Prima facie evidence by third party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. [1965 ex.s. c 157 § 1-202.]

Official documents as evidence: RCW 5.40.020, 5.40.030, 5.40.040. Uniform Business Records as Evidence Act: Chapter 5.45 RCW.

62A.1-203 Obligation of good faith. Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement. [1965 ex.s. c 157 § 1-203.]

62A.1-204 Time; reasonable time; "seasonably". (1) Whenever this Title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time. [1965 ex.s. c 157 § 1-204.]

62A.1-205 Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter. [1965 ex.s. c 157 § 1-205. Cf. former RCW sections: (i) RCW 63.04.100(1); 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.160(5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (iii) RCW 63.04.190(2); 1925 ex.s. c 142 § 18; RRS § 5836-18. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

62A.1-206 Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (RCW 62A.2-201) nor to securities (RCW 62A.8-319) nor to security agreements (RCW 62A.9-203). [1965 ex.s. c 157 § 1-206. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

Statute of frauds: Chapter 19.36 RCW.

62A.1-207 Performance or acceptance under reservation of rights. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient. [1965 ex.s. c 157 § 1-207.]

62A.1-208 Option to accelerate at will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. [1965 ex.s. c 157 § 1-208. Cf. former RCW 61.08.080; Code 1881 § 1998; 1879 p 106 § 13; RRS § 1111.]

Article 2

SALES

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ARTICLE 2
SALESPART 1
SHORT TITLE, GENERAL CONSTRUCTION
AND SUBJECT MATTER

62A.2-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Sales. [1965 ex.s. c 157 § 2-101.]

62A.2-102 Scope; certain security and other transactions excluded from this Article. Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers. [1965 ex.s. c 157 § 2-102. Cf. former RCW 63.04.750; 1925 ex.s. c 142 § 75; RRS § 5836-75.]

62A.2-103 Definitions and index of definitions. (1) In this Article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance." RCW 62A.2-606.

"Banker's credit." RCW 62A.2-325.

"Between merchants." RCW 62A.2-104.

"Cancellation." RCW 62A.2-106(4).

"Commercial unit." RCW 62A.2-105.

"Confirmed credit." RCW 62A.2-325.

"Conforming to contract." RCW 62A.2-106.

"Contract for sale." RCW 62A.2-106.

"Cover." RCW 62A.2-712.

"Entrusting." RCW 62A.2-403.

"Financing agency." RCW 62A.2-104.

"Future goods." RCW 62A.2-105.

"Goods." RCW 62A.2-105.

"Identification." RCW 62A.2-501.

"Installment contract." RCW 62A.2-612.

"Letter of credit." RCW 62A.2-325.

"Lot." RCW 62A.2-105.

"Merchant." RCW 62A.2-104.

"Overseas." RCW 62A.2-323.

"Person in position of seller." RCW 62A.2-707.

"Present sale." RCW 62A.2-106.

"Sale." RCW 62A.2-106.

"Sale on approval." RCW 62A.2-326.

"Sale or return." RCW 62A.2-326.

"Termination." RCW 62A.2-106.

(3) The following definitions in other Articles apply to this Article:

"Check." RCW 62A.3-104.

"Consignee." RCW 62A.7-102.

"Consignor." RCW 62A.7-102.

"Consumer goods." RCW 62A.9-109.

"Dishonor." RCW 62A.3-507.

"Draft." RCW 62A.3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 2-103. Cf. former RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

62A.2-104 Definitions: "Merchant"; "between merchants"; "financing agency". (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (RCW 62A.2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. [1965 ex.s. c 157 § 2-104. Cf. former RCW sections: (i) RCW 63.04.160(2), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (ii) RCW 63.04.170(c); 1925 ex.s. c 142 § 16; RRS § 5836-16. (iii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71. (v) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440. (vi) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

62A.2-105 Definitions: Transferability; "goods"; "future" goods; "lot"; "commercial unit". (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the

price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (RCW 62A.2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be, a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole. [1965 ex.s. c 157 § 2-105. Subds. (1), (2), (3), (4), cf. former RCW sections: (i) RCW 63.04.060; 1925 ex.s. c 142 § 5; RRS § 5836-5. (ii) RCW 63.04.070; 1925 ex.s. c 142 § 6; RRS § 5836-6. (iii) RCW 63.04.755; 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

62A.2-106 Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation". (1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (RCW 62A.2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of

the whole contract or any unperformed balance. [1965 ex.s. c 157 § 2-106. Subd. (1) cf. former RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. Subd. (2) cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.450; 1925 ex.s. c 142 § 44; RRS § 5836-44. (iii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-107 Goods to be severed from realty: Recording. (1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. [1965 ex.s. c 157 § 2-107. Cf. former RCW sections: (i) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (ii) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

PART 2 FORM, FORMATION AND READJUSTMENT OF CONTRACT

62A.2-201 Formal requirements; statute of frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (RCW 62A.2-606). [1965 ex.s. c 157 § 2-201. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

Statute of frauds: RCW 19.36.010.

62A.2-202 Final written expression: Parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (RCW 62A.1-205) or by course of performance (RCW 62A.2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [1965 ex.s. c 157 § 2-202.]

62A.2-203 Seals inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such contract or offer. [1965 ex.s. c 157 § 2-203. Cf. former RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

Corporate seals—Effect of absence from instrument: RCW 64.04.105.

62A.2-204 Formation in general. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a

reasonably certain basis for giving an appropriate remedy. [1965 ex.s. c 157 § 2-204. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-205 Firm offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1965 ex.s. c 157 § 2-205. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-206 Offer and acceptance in formation of contract. (1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1965 ex.s. c 157 § 2-206. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-207 Additional terms in acceptance or confirmation. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which

the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Title. [1965 ex.s. c 157 § 2-207. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-208 Course of performance or practical construction. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (RCW 62A.1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance. [1965 ex.s. c 157 § 2-208.]

62A.2-209 Modification, rescission and waiver. (1) An agreement modifying a contract within this Article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this Article (RCW 62A.2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [1965 ex.s. c 157 § 2-209.]

62A.2-210 Delegation of performance; assignment of rights. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him

by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (RCW 62A.2-609). [1965 ex.s. c 157 § 2-210.]

PART 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

62A.2-301 General obligations of parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. [1965 ex.s. c 157 § 2-301. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41.]

62A.2-302 Unconscionable contract or clause. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. [1965 ex.s. c 157 § 2-302.]

62A.2-303 Allocation or division of risks. Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden. [1965 ex.s. c 157 § 2-303.]

62A.2-304 Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith. [1965 ex.s. c 157 § 2-304. Cf. former RCW 63.04.100(2), (3); 1925 ex.s. c 142 § 9; RRS § 5836-9.]

62A.2-305 Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. [1965 ex.s. c 157 § 2-305. Cf. former RCW sections: (i) RCW 63.04.100; 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.110; 1925 ex.s. c 142 § 10; RRS § 5836-10. Subd. (3) cf. former RCW 63.04.120(2); 1925 ex.s. c 142 § 11; RRS § 5836-11.]

62A.2-306 Output, requirements and exclusive dealings. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale. [1965 ex.s. c 157 § 2-306.]

62A.2-307 Delivery in single lot or several lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot. [1965 ex.s. c 157 § 2-307. Cf. former RCW 63.04.460(1); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-308 Absence of specified place for delivery. Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels. [1965 ex.s. c 157 § 2-308. Subd. (a), (b) cf. former RCW 63.04.440(1); 1925 ex.s. c 142 § 43; RRS § 5836-43.]

62A.2-309 Absence of specific time provisions; notice of termination. (1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. [1965 ex.s. c 157 § 2-309. Cf. former RCW sections: (i) RCW 63.04.440(2); 1925 ex.s. c 142 § 43; RRS § 5836-43. (ii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iii) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (iv) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

62A.2-310 Open time for payment or running of credit; authority to ship under reservation. Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (RCW 62A.2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period. [1965 ex.s. c 157 § 2-310. Cf. former RCW sections: (i) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (ii) RCW 63.04.470(1); 1925 ex.s. c 142 § 46; RRS § 5836-46. (iii) RCW 63.04.480(2); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

62A.2-311 Options and cooperation respecting performance. (1) An agreement for sale which is otherwise

sufficiently definite (subsection (3) of RCW 62A.2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of RCW 62A.2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods. [1965 ex.s. c 157 § 2-311.]

62A.2-312 Warranty of title and against infringement; buyer's obligation against infringement. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. [1965 ex.s. c 157 § 2-312. Cf. former RCW 63.04.140; 1925 ex.s. c 142 § 13; RRS § 5836-13.]

62A.2-313 Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. [1965 ex.s. c 157 § 2-313. Cf. former RCW sections: (i) RCW 63.04.130; 1925 ex.s. c 142 § 12; RRS § 5836-12. (ii) RCW 63.04.150; 1925 ex.s. c 142 § 14; RRS § 5836-14. (iii) RCW 63.04.170; 1925 ex.s. c 142 § 16; RRS § 5836-16.]

62A.2-314 Implied warranty: Merchantability; usage of trade. (1) Unless excluded or modified (RCW 62A.2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as
(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (RCW 62A.2-316) other implied warranties may arise from course of dealing or usage of trade. [1965 ex.s. c 157 § 2-314. Cf. former RCW 63.04.160(2); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

62A.2-315 Implied warranty: Fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. [1965 ex.s. c 157 § 2-315. Cf. former RCW 63.04.160(1), (4), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

62A.2-316 Exclusion or modification of warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (RCW

62A.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section and the provisions of RCW 62A.2-719, as now or hereafter amended, in any case where goods are purchased primarily for personal, family or household use and not for commercial or business use, disclaimers of the warranty of merchantability or fitness for particular purpose shall not be effective to limit the liability of merchant sellers except insofar as the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (RCW 62A.2-718 and RCW 62A.2-719). [1974 ex.s. c 180 § 1; 1974 ex.s. c 78 § 1; 1965 ex.s. c 157 § 2-316. Subd. (3)(b) cf. former RCW 63.04.160(3); 1925 ex.s. c 142 § 15; RRS § 5836-15. Subd. (3)(c) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-317 Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1965 ex.s. c 157 § 2-317. Cf. former RCW sections: RCW 63.04.150 through 63.04-170; 1925 ex.s. c 142 §§ 14 through 16; RRS §§ 5836-14 through 5836-16.]

62A.2-318 Third party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. [1965 ex.s. c 157 § 2-318.]

62A.2-319 F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (RCW 62A.2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (RCW 62A.2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (RCW 62A.2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (RCW 62A.2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in

substitution for the documents. [1965 ex.s. c 157 § 2-319.]

62A.2-320 C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-320.]

62A.2-321 C.I.F. or C.&F.: "Net landed weights"; "payment on arrival"; warranty of condition on arrival. Under a contract containing a term C.I.F. or C.&F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect

on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. [1965 ex.s. c 157 § 2-321.]

62A.2-322 Delivery "ex-ship". (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded. [1965 ex.s. c 157 § 2-322.]

62A.2-323 Form of bill of lading required in overseas shipment; "overseas". (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of RCW 62A.2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. [1965 ex.s. c 157 § 2-323.]

62A.2-324 "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform

to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (RCW 62A.2-613). [1965 ex.s. c 157 § 2-324.]

62A.2-325 "Letter of credit" term; "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. [1965 ex.s. c 157 § 2-325.]

62A.2-326 Sale on approval and sale or return; consignment sales and rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the Article on Secured Transactions (Article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (RCW 62A.2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202). [1965 ex.s. c 157

§ 2-326. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-327 Special incidents of sale on approval and sale or return. (1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense. [1965 ex.s. c 157 § 2-327. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-328 Sale by auction. (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. [1965 ex.s. c 157 § 2-328. Cf. former RCW 63.04.220; 1925 ex.s. c 142 § 21; RRS § 5836-21.]

PART 4

TITLE, CREDITORS AND GOOD FAITH PURCHASERS

62A.2-401 Passing of title; reservation for security; limited application of this section. Each provision of this

Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (RCW 62A.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale". [1965 ex.s. c 157 § 2-401. Cf. former RCW sections: RCW 63.04.180 through 63.04.210; 1925 ex.s. c 142 §§ 17 through 20; RRS § 5836-17 through 5836-20.]

62A.2-402 Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (RCW 62A.2-502 and RCW 62A.2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in

good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference. [1965 ex.s. c 157 § 2-402. Subd. (2) cf. former RCW sections: (i) RCW 63.04.270; 1925 ex.s. c 142 § 26; RRS § 5836-26. (ii) RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

62A.2-403 Power to transfer; good faith purchase of goods; "entrusting". (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale".

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk Transfers (Article 6) and Documents of Title (Article 7). [1967 c 114 § 8; 1965 ex.s. c 157 § 2-403. Cf. former RCW sections: (i) RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.04.210(4); 1925 ex.s. c 142 § 20; RRS § 5836-20. (iii) RCW 63.04.240; 1925 ex.s. c 142 § 23; RRS § 5836-23. (iv) RCW 63.04.250; 1925 ex.s. c 142 § 24; RRS § 5836-24. (v) RCW 63.04.260; 1925 ex.s. c 142 § 25; RRS § 5836-25. (vi) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

Reviser's note: The section caption is the same as that originally enacted in 1965 ex.s. c 157 § 2-403. It was not included in the 1967 amendment to this section.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Restoration of stolen property: RCW 10.79.050.

PART 5 PERFORMANCE

62A.2-501 Insurable interest in goods; manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. [1965 ex.s. c 157 § 2-501. Cf. former RCW sections: (i) RCW 63.04.180; 1925 ex.s. c 142 § 17; RRS § 5836-17. (ii) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-502 Buyer's right to goods on seller's insolvency. (1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. [1965 ex.s. c 157 § 2-502. Cf. former RCW sections: RCW 63.04.180 through 63.04.200; 1925 ex.s. c 142 §§ 17 through 19; RRS §§ 5836-17 through 5836-19.]

62A.2-503 Manner of seller's tender of delivery. (1) Tender of delivery requires that the seller put and hold

conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of RCW 62A.2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection. [1965 ex.s. c 157 § 2-503. Cf. former RCW sections: RCW 63.04.120, 63.04.200, 63.04.210, 63.04.440, 63.04.470, and 63.04.520; 1925 ex.s. c 142 §§ 11, 19, 20, 43, 46, and 51; RRS §§ 5836-11, 5836-19, 5836-20, 5836-43, 5836-46, and 5836-51.]

62A.2-504 Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues. [1965 ex.s. c 157 § 2-504. Cf. former RCW 63.04.470; 1925 ex.s. c 142 § 46; RRS § 5836-46.]

62A.2-505 Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of RCW 62A.2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. [1965 ex.s. c 157 § 2-505. Cf. former RCW 63.04.210 (2), (3), (4); 1925 ex.s. c 142 § 20; RRS § 5836-20.]

62A.2-506 Rights of financing agency. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. [1965 ex.s. c 157 § 2-506.]

62A.2-507 Effect of seller's tender; delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. [1965

ex.s. c 157 § 2-507. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. (iii) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (iv) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-508 Cure by seller of improper tender or delivery; replacement. (1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. [1965 ex.s. c 157 § 2-508.]

62A.2-509 Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (RCW 62A.2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of RCW 62A.2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (RCW 62A.2-327) and on effect of breach on risk of loss (RCW 62A.2-510). [1965 ex.s. c 157 § 2-509. Cf. former RCW sections: (i) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19. (ii) RCW 63.04.230; 1925 ex.s. c 142 § 22; RRS § 5836-22.]

62A.2-510 Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. [1965 ex.s. c 157 § 2-510.]

62A.2-511 Tender of payment by buyer; payment by check. (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Title on the effect of an instrument on an obligation (RCW 62A.3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. [1965 ex.s. c 157 § 2-511. Cf. former RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42.]

62A.2-512 Payment by buyer before inspection. (1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Title (RCW 62A.5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies. [1965 ex.s. c 157 § 2-512. Cf. former RCW sections: (i) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49.]

62A.2-513 Buyer's right to inspection of goods. (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of RCW 62A.2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. [1965 ex.s. c 157 § 2-513. Cf. former RCW 63.04.480 (2), (3); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

62A.2-514 When documents deliverable on acceptance; when on payment. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. [1965 ex.s. c 157 § 2-514. Cf. former RCW 81.32.411; 1961 c 14 § 81.32.411; prior: 1915 c 159 § 41; RRS § 3687; formerly RCW 81.32.500.]

62A.2-515 Preserving evidence of goods in dispute. In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment. [1965 ex.s. c 157 § 2-515.]

PART 6

BREACH, REPUDIATION AND EXCUSE

62A.2-601 Buyer's rights on improper delivery. Subject to the provisions of this Article on breach in installment contracts (RCW 62A.2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (RCW 62A.2-718 and RCW 62A.2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest. [1965 ex.s. c 157 § 2-601. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (iii) RCW 63.04.700(1); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-602 Manner and effect of rightful rejection. (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (RCW 62A.2-603 and RCW 62A.2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of RCW 62A.2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (RCW 62A.2-703). [1965 ex.s. c 157 § 2-602. Cf. former RCW sections: (i) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8. (ii) RCW 63.04.510; 1925 ex.s. c 142 § 50; RRS § 5836-50.]

62A.2-603 Merchant buyer's duties as to rightfully rejected goods. (1) Subject to any security interest in the buyer (subsection (3) of RCW 62A.2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. [1965 ex.s. c 157 § 2-603.]

62A.2-604 Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. [1965 ex.s. c 157 § 2-604.]

62A.2-605 Waiver of buyer's objections by failure to particularize. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. [1965 ex.s. c 157 § 2-605.]

62A.2-606 What constitutes acceptance of goods.

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of RCW 62A.2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1965 ex.s. c 157 § 2-606. Cf. former RCW sections: (i) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47; (ii) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

62A.2-607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of RCW 62A.2-312). [1965 ex.s. c 157 § 2-607. Subd. (1) cf. former RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. Subd. (2), (3) cf. former RCW sections: (i) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49. (ii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-608 Revocation of acceptance in whole or in part. (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. [1965 ex.s. c 157 § 2-608. Cf. former RCW 63.04.700 (1)(d), (3), (4), (5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-609 Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. [1965 ex.s. c 157 § 2-609. Cf. former

RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(b); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-610 Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (RCW 62A.2-703 or RCW 62A.2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (RCW 62A.2-704). [1965 ex.s. c 157 § 2-610. Cf. former RCW section: (i) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.660; 1925 ex.s. c 142 § 65; RRS § 5836-65.]

62A.2-611 Retraction of anticipatory repudiation. (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (RCW 62A.2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1965 ex.s. c 157 § 2-611.]

62A.2-612 "Installment contract"; breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands

performance as to future installments. [1965 ex.s. c 157 § 2-612. Cf. former RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-613 Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (RCW 62A.2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller. [1965 ex.s. c 157 § 2-613. Cf. former RCW sections: (i) RCW 63.04.080; 1925 ex.s. c 142 § 7; RRS § 5836-7. (ii) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8.]

62A.2-614 Substituted performance. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. [1965 ex.s. c 157 § 2-614.]

62A.2-615 Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation

is required under paragraph (b), of the estimated quota thus made available for the buyer. [1965 ex.s. c 157 § 2-615.]

62A.2-616 Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (RCW 62A.2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected. [1965 ex.s. c 157 § 2-616.]

PART 7 REMEDIES

62A.2-701 Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article. [1965 ex.s. c 157 § 2-701.]

62A.2-702 Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (RCW 62A.2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this Article (RCW 62A.2-403). Successful reclamation of goods excludes all other remedies with respect to them. [1965 ex.s. c 157 § 2-702. Subd. (1) cf. former RCW sections: (i) RCW 63.04.540(1) (b); 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(c); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.580; 1925 ex.s. c 142 § 57; RRS § 5836-57. Subd. (3) cf. former RCW 63.04.755(3); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

62A.2-703 Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (RCW 62A.2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (RCW 62A.2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (RCW 62A.2-706);

(e) recover damages for non-acceptance (RCW 62A.2-708) or in a proper case the price (RCW 62A.2-709);

(f) cancel. [1965 ex.s. c 157 § 2-703. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.620(1); 1925 ex.s. c 142 § 61; RRS § 5836-61.]

62A.2-704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. [1965 ex.s. c 157 § 2-704. Cf. former RCW sections: (i) RCW 63.04.640(3); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.650(4); 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-705 Seller's stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (RCW 62A.2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1965 ex.s. c 157 § 2-705. Cf. former RCW sections: (i) RCW 22.04.100; 1913 c 99 § 9; RRS § 3595; prior: 1891 c 134 § 7. (ii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iii) RCW 22.04.500; 1913 c 99 § 49; RRS § 3635. (iv) RCW 63.04.580 through 63.04.600; 1925 ex.s. c 142 §§ 57 through 59; RRS §§ 5836-57 through 5836-59. (v) RCW 81.32.121, 81.32.141, and 81.32.421; 1961 c 14 §§ 81.32.121, 81.32.141, and 81.32.421; prior: 1915 c 159 §§ 12, 14, and 42; RRS §§ 3658, 3660, and 3688; formerly RCW 81.32.130, 81.32.160 and 81.32.510.]

62A.2-706 Seller's resale including contract for resale. (1) Under the conditions stated in RCW 62A.2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (RCW 62A.2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of RCW 62A.2-711). [1967 c 114 § 13; 1965 ex.s. c 157 § 2-706. Cf. former RCW 63.04.610; 1925 ex.s. c 142 § 60; RRS § 5836-60.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.2-707 "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (RCW 62A.2-705) and resell (RCW 62A.2-706) and recover incidental damages (RCW 62A.2-710). [1965 ex.s. c 157 § 2-707. Cf. former RCW 63.04.530(2); 1925 ex.s. c 142 § 52; RRS § 5836-52.]

62A.2-708 Seller's damages for non-acceptance or repudiation. (1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (RCW 62A.2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. [1965 ex.s. c 157 § 2-708. Cf. former RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-709 Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (RCW 62A.2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section. [1965 ex.s. c 157 § 2-709. Cf. former RCW 63.04.640; 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-710 Seller's incidental damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach. [1965 ex.s. c 157 § 2-710. Cf. former RCW sections: (i) RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

62A.2-711 Buyer's remedies in general; buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (RCW 62A.2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (RCW 62A.2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this Article (RCW 62A.2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this Article (RCW 62A.2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as

an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-711. Subd. (3) cf. former RCW 63.04.700(5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-712 "Cover"; buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. [1965 ex.s. c 157 § 2-712.]

62A.2-713 Buyer's damages for non-delivery or repudiation. (1) Subject to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. [1965 ex.s. c 157 § 2-713. Cf. former RCW 63.04.680(3); 1925 ex.s. c 142 § 67; RRS § 5836-67.]

62A.2-714 Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of RCW 62A.2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered. [1965 ex.s. c 157 § 2-714. Cf. former RCW 63.04.700 (6), (7); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-715 Buyer's incidental and consequential damages. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty. [1965 ex.s. c 157 § 2-715. Subd. (2) cf. former RCW sections: (i) RCW 63.04.700(7); 1925 ex.s. c 142 § 69; RRS § 5836-69. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

62A.2-716 Buyer's right to specific performance or replevin. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. [1965 ex.s. c 157 § 2-716. Cf. former RCW 63.04.690; 1925 ex.s. c 142 § 68; RRS § 5836-68.]

Replevin: Chapter 7.64 RCW.

62A.2-717 Deduction of damages from the price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. [1965 ex.s. c 157 § 2-717. Cf. former RCW 63.04.700(1)(a); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-718 Liquidation or limitation of damages; deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-718.]

62A.2-719 Contractual modification or limitation of remedy. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.

(3) Limitation of consequential damages for injury to the person in the case of goods purchased primarily for personal, family or household use or of any services related thereto is invalid unless it is proved that the limitation is not unconscionable. Limitation of remedy to repair or replacement of defective parts or non-conforming goods is invalid in sales of goods primarily for personal, family or household use unless the manufacturer or seller maintains or provides within this state facilities adequate to provide reasonable and expeditious performance of repair or replacement obligations.

Limitation of other consequential damages is valid unless it is established that the limitation is unconscionable. [1974 ex.s. c 180 § 2; 1974 ex.s. c 78 § 2; 1965 ex.s. c 157 § 2-719. Subd. (1)(a) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-720 Effect of "cancellation" or "rescission" on claims for antecedent breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. [1965 ex.s. c 157 § 2-720.]

62A.2-721 Remedies for fraud. Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy. [1965 ex.s. c 157 § 2-721.]

62A.2-722 Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern. [1965 ex.s. c 157 § 2-722.]

62A.2-723 Proof of market price: Time and place.

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (RCW 62A.2-708 or RCW 62A.2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. [1965 ex.s. c 157 § 2-723.]

62A.2-724 Admissibility of market quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. [1965 ex.s. c 157 § 2-724.]

62A.2-725 Statute of limitations in contracts for sale.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Title becomes effective. [1965 ex.s. c 157 § 2-725.]

Limitation of actions—Tolling of statute: RCW 4.16.170-4.16.240.

**Article 3
COMMERCIAL PAPER**

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**ARTICLE 3
 COMMERCIAL PAPER**

**PART 1
 SHORT TITLE, FORM AND INTERPRETATION**

62A.3-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Commercial Paper. [1965 ex.s. c 157 § 3-101.]

62A.3-102 Definitions and index of definitions. (1) In this Article unless the context otherwise requires (a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this Article and the sections in which they appear are:

- "Acceptance." RCW 62A.3-410.
- "Accommodation party." RCW 62A.3-415.
- "Alteration." RCW 62A.3-407.
- "Certificate of deposit." RCW 62A.3-104.
- "Certification." RCW 62A.3-411.
- "Check." RCW 62A.3-104.
- "Definite time." RCW 62A.3-109.
- "Dishonor." RCW 62A.3-507.
- "Draft." RCW 62A.3-104.
- "Holder in due course." RCW 62A.3-302.
- "Negotiation." RCW 62A.3-202.
- "Note." RCW 62A.3-104.
- "Notice of dishonor." RCW 62A.3-508.
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- "Presentment." RCW 62A.3-504.
- "Protest." RCW 62A.3-509.
- "Restrictive indorsement." RCW 62A.3-205.
- "Signature." RCW 62A.3-401.

(3) The following definitions in other Articles apply to this Article:

- "Account." RCW 62A.4-104.
- "Banking day." RCW 62A.4-104.
- "Clearing house." RCW 62A.4-104.
- "Collecting bank." RCW 62A.4-105.
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- "Documentary draft." RCW 62A.4-104.
- "Intermediary bank." RCW 62A.4-105.
- "Item." RCW 62A.4-104.
- "Midnight deadline." RCW 62A.4-104.
- "Payor bank." RCW 62A.4-105.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 3-102. Cf. former RCW sections: (i) RCW 62.01.001(5); 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392. (ii) RCW 62.01.128; 1955 c 35 § 62.01.128; prior: 1899

c 149 § 128; RRS § 3518. (iii) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

62A.3-103 Limitations on scope of Article. (1) This Article does not apply to money, documents of title or investment securities.

(2) The provisions of this Article are subject to the provisions of the Article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9). [1965 ex.s. c 157 § 3-103.]

62A.3-104 Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note". (1) Any writing to be a negotiable instrument within this Article must

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is

(a) a "draft" ("bill of exchange") if it is an order;

(b) a "check" if it is a draft drawn on a bank and payable on demand;

(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

(d) a "note" if it is a promise other than a certificate of deposit.

(3) As used in other Articles of this Title, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this Article as well as to instruments which are so negotiable. [1965 ex.s. c 157 § 3-104. Cf. former RCW sections: RCW 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; 1955 c 35 §§ 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; prior: 1899 c 149 §§ 1, 5, 10, 126, 184, and 185; RRS §§ 3392, 3396, 3401, 3516, 3574, and 3575.]

62A.3-105 When promise or order unconditional. (1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

(a) is subject to implied or constructive conditions; or

(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or

(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument

(a) states that it is subject to or governed by any other agreement; or

(b) states that it is to be paid only out of a particular fund or source except as provided in this section. [1965 ex.s. c 157 § 3-105. Cf. former RCW 62.01.003; 1955 c 35 § 62.01.003; prior: 1899 c 149 § 3; RRS § 3394.]

62A.3-106 Sum certain. (1) The sum payable is a sum certain even though it is to be paid

(a) with stated interest or by stated installments; or

(b) with stated different rates of interest before and after default or a specified date; or

(c) with a stated discount or addition if paid before or after the date fixed for payment; or

(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal. [1965 ex.s. c 157 § 3-106. Cf. former RCW sections: (i) RCW 62.01.002; 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

62A.3-107 Money. (1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency. [1965 ex.s. c 157 § 3-107. Cf. former RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

62A.3-108 Payable on demand. Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated. [1965 ex.s. c 157 § 3-108. Cf. former RCW 62.01.007; 1955 c 35 § 62.01.007; prior: 1899 c 149 § 7; RRS § 3398.]

62A.3-109 Definite time. (1) An instrument is payable at a definite time if by its terms it is payable

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred. [1965 ex.s. c 157 § 3-109. Cf. former RCW sections: (i) RCW 62.01.002(3); 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.004; 1955 c 35 § 62.01.004; prior: 1899 c 149 § 4; RRS § 3395. (iii) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

62A.3-110 Payable to order. (1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of

(a) the maker or drawer; or

(b) the drawee; or

(c) a payee who is not maker, drawer or drawee; or

(d) two or more payees together or in the alternative;

or

(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten. [1965 ex.s. c 157 § 3-110. Cf. former RCW 62.01.008; 1955 c 35 § 62.01.008; prior: 1899 c 149 § 8; RRS § 3399.]

62A.3-111 Payable to bearer. An instrument is payable to bearer when by its terms it is payable to

(a) bearer or the order of bearer; or

(b) a specified person or bearer; or

(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee. [1965 ex.s. c 157 § 3-111. Cf. former RCW 62.01.009; 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

62A.3-112 Terms and omissions not affecting negotiability. (1) The negotiability of an instrument is not affected by

(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (RCW

62A.3-801) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal. [1965 ex.s. c 157 § 3-112. Cf. former RCW sections: (i) 62.01.005; 1955 c 35 § 62.01.005; prior: 1899 c 149 § 5; RRS § 3396. (ii) RCW 62.01.006; 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

62A.3-113 Seal. An instrument otherwise negotiable is within this Article even though it is under a seal. [1965 ex.s. c 157 § 3-113. Cf. former RCW 62.01.006(4); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

62A.3-114 Date, antedating, postdating. (1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct. [1965 ex.s. c 157 § 3-114. Cf. former RCW sections: (i) RCW 62.01.006(1); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397. (ii) RCW 62.01.011; 1955 c 35 § 62.01.011; prior: 1899 c 149 § 11; RRS § 3402. (iii) RCW 62.01.012; 1955 c 35 § 62.01.012; prior: 1899 c 149 § 12; RRS § 3403. (iv) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

62A.3-115 Incomplete instruments. (1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (RCW 62A.3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting. [1965 ex.s. c 157 § 3-115. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (iii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406.]

62A.3-116 Instruments payable to two or more persons. An instrument payable to the order of two or more persons

(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them. [1965 ex.s. c 157 § 3-116. Cf. former RCW 62.01.041; 1955 c 35 § 62.01.041; prior: 1899 c 149 § 41; RRS § 3432.]

62A.3-117 Instruments payable with words of description. An instrument made payable to a named person with the addition of words describing him

(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties. [1965 ex.s. c 157 § 3-117. Cf. former RCW 62.01.042; 1955 c 35 § 62.01.042; prior: 1899 c 149 § 42; RRS § 3433.]

62A.3-118 Ambiguous terms and rules of construction. The following rules apply to every instrument:

(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option

to extend an instrument over the objection of a maker or acceptor or other party who in accordance with RCW 62A.3-604 tenders full payment when the instrument is due. [1965 ex.s. c 157 § 3-118. Cf. former RCW sections: (i) RCW 62.01.017; 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.068; 1955 c 35 § 62.01.068; prior: 1899 c 149 § 68; RRS § 3459. (iii) RCW 62.01.130; 1955 c 35 § 62.01.130; prior: 1899 c 149 § 130; RRS § 3520.]

62A.3-119 Other writings affecting instrument. (1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument. [1965 ex.s. c 157 § 3-119.]

62A.3-120 Instruments "payable through" bank. An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument. [1965 ex.s. c 157 § 3-120.]

62A.3-121 Instruments payable at bank. A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it. [1965 ex.s. c 157 § 3-121. Cf. former RCW 62.01.087; 1955 c 35 § 62.01.087; prior: 1899 c 149 § 87; RRS § 3477.]

62A.3-122 Accrual of cause of action. (1) A cause of action against a maker or an acceptor accrues

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action. [1965 ex.s. c 157 § 3-122.]

PART 2 TRANSFER AND NEGOTIATION

62A.3-201 Transfer: Right to indorsement. (1) Transfer of an instrument vests in the transferee such

rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner. [1965 ex.s. c 157 § 3-201. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449.]

62A.3-202 Negotiation. (1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement. [1965 ex.s. c 157 § 3-202. Cf. former RCW sections: (i) RCW 62.01.030; 1955 c 35 § 62.01.030; prior: 1899 c 149 § 30; RRS § 3421. (ii) RCW 62.01.031; 1955 c 35 § 62.01.031; prior: 1899 c 149 § 31; RRS § 3422. (iii) RCW 62.01.032; 1955 c 35 § 62.01.032; prior: 1899 c 149 § 32; RRS § 3423.]

62A.3-203 Wrong or misspelled name. Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument. [1965 ex.s. c 157 § 3-203. Cf. former RCW 62.01.043; 1955 c 35 § 62.01.043; prior: 1899 c 149 § 43; RRS § 3434.]

62A.3-204 Special indorsement; blank indorsement. (1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [1965 ex.s. c 157 § 3-204. Cf. former RCW sections: (i) RCW 62.01.009(5); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400. (ii) RCW 62.01.033 through 62.01.036; 1955 c 35 §§ 62.01.033 through 62.01.036; prior: 1899 c 149 §§ 33 through 36; RRS §§ 3424 through 3427. (iii) RCW 62.01.040; 1955 c 35 § 62.01.040; prior: 1899 c 149 § 40; RRS § 3431.]

62A.3-205 Restrictive indorsements. An indorsement is restrictive which either

(a) is conditional; or

(b) purports to prohibit further transfer of the instrument; or

(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(d) otherwise states that it is for the benefit or use of the indorser or of another person. [1965 ex.s. c 157 § 3-205. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430.]

62A.3-206 Effect of restrictive indorsement. (1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of RCW 62A.3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of RCW 62A.3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a

fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of RCW 62A.3-304). [1965 ex.s. c 157 § 3-206. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.037; 1955 c 35 § 62.01.037; prior: 1899 c 149 § 37; RRS § 3428. (iii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430. (iv) RCW 62.01.047; 1955 c 35 § 62.01.047; prior: 1899 c 149 § 47; RRS § 3438.]

62A.3-207 Negotiation effective although it may be rescinded. (1) Negotiation is effective to transfer the instrument although the negotiation is

(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or

(b) obtained by fraud, duress or mistake of any kind; or

(c) part of an illegal transaction; or

(d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law. [1965 ex.s. c 157 § 3-207. Cf. former RCW sections: (i) RCW 62.01.022; 1955 c 35 § 62.01.022; prior: 1899 c 149 § 22; RRS § 3413. (ii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iii) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

62A.3-208 Reacquisition. Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well. [1965 ex.s. c 157 § 3-208. Cf. former RCW sections: (i) RCW 62.01.048; 1955 c 35 § 62.01.048; prior: 1899 c 149 § 48; RRS § 3439. (ii) RCW 62.01.050; 1955 c 35 § 62.01.050; prior: 1899 c 149 § 50; RRS § 3441. (iii) RCW 62.01.121; 1955 c 35 § 62.01.121; prior: 1899 c 149 § 121; RRS § 3511.]

PART 3 RIGHTS OF A HOLDER

62A.3-301 Rights of a holder. The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in RCW 62A.3-603 on payment or satisfaction, discharge it or enforce payment in his own name. [1965 ex.s. c 157 § 3-301. Cf. former RCW 62.01.051; 1955 c 35 § 62.01.051; prior: 1899 c 149 § 51; RRS § 3442.]

62A.3-302 Holder in due course. (1) A holder in due course is a holder who takes the instrument

(a) for value; and

(b) in good faith; and

(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

(a) by purchase of it at judicial sale or by taking it under legal process; or

(b) by acquiring it in taking over an estate; or

(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased. [1965 ex.s. c 157 § 3-302. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

62A.3-303 Taking for value. A holder takes the instrument for value

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person. [1965 ex.s. c 157 § 3-303. Cf. former RCW sections: (i) RCW 62.01.025 through 62.01.027; 1955 c 35 §§ 62.01.025 through 62.01.027; prior: 1899 c 149 §§ 25 through 27; RRS §§ 3416 through 3418. (ii) RCW 62.01.054; 1955 c 35 § 62.01.054; prior: 1899 c 149 § 54; RRS § 3445.]

62A.3-304 Notice to purchaser. (1) The purchaser has notice of a claim or defense if

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made; or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check

drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim

(a) that the instrument is antedated or postdated;

(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) that any party has signed for accommodation;

(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) that any person negotiating the instrument is or was a fiduciary;

(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this Article to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it. [1965 ex.s. c 157 § 3-304. Cf. former RCW sections: (i) RCW 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; 1955 c 35 §§ 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; prior: 1899 c 149 §§ 45, 52, 53, 55, and 56; RRS §§ 3436, 3443, 3444, 3446, and 3447. (ii) RCW 62.01.0195; 1955 c 35 § 62.01.0195; prior: 1927 c 296 § 1; 1925 ex.s. c 54 § 1; RRS § 3410-1.]

62A.3-305 Rights of a holder in due course. To the extent that a holder is a holder in due course he takes the instrument free from

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument. [1965 ex.s. c 157 § 3-305. Cf. former RCW sections: (i) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (ii) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (iii) RCW 62.01.057; 1955 c 35 § 62.01.057; prior: 1899 c 149 § 57; RRS § 3448.]

62A.3-306 Rights of one not holder in due course. Unless he has the rights of a holder in due course any person takes the instrument subject to

(a) all valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, non-performance of any condition precedent, non-delivery, or delivery for a special purpose (RCW 62A.3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party. [1965 ex.s. c 157 § 3-306. Cf. former RCW sections: (i) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (ii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iv) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

62A.3-307 Burden of establishing signatures, defenses and due course. (1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course. [1965 ex.s. c 157 § 3-307. Cf. former RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

PART 4 LIABILITY OF PARTIES

62A.3-401 Signature. (1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature. [1965 ex.s. c 157 § 3-401. Cf. former RCW 62.01.018; 1955 c 35 § 62.01.018; prior: 1899 c 149 § 18; RRS § 3409.]

62A.3-402 Signature in ambiguous capacity. Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement. [1965 ex.s. c 157 § 3-402. Cf. former RCW sections: (i) RCW 62.01.017(6); 1955 c 149 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.063; 1955 c 149 § 62.01.063; prior: 1899 c 149 § 63; RRS 3454.]

62A.3-403 Signature by authorized representative.

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity. [1965 ex.s. c 157 § 3-403. Cf. former RCW sections: RCW 62.01.019 through 62.01.021; 1955 c 35 §§ 62.01.019 through 62.01.021; prior: 1899 c 149 §§ 19 through 21; RRS §§ 3410 through 3412.]

62A.3-404 Unauthorized signatures. (1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this Article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer. [1965 ex.s. c 157 § 3-404. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

62A.3-405 Impostors; signature in name of payee.

(1) An indorsement by any person in the name of a named payee is effective if

(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing. [1965 ex.s. c 157 § 3-405. Cf. former RCW 62.01.009(3); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

62A.3-406 Negligence contributing to alteration or unauthorized signature. Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized

signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business. [1965 ex.s. c 157 § 3-406.]

62A.3-407 Alteration. (1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed. [1965 ex.s. c 157 § 3-407. Cf. former RCW sections: (i) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (ii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (iii) RCW 62.01.124; 1955 c 35 § 62.01.124; prior: 1899 c 149 § 124; RRS § 3514. (iv) RCW 62.01.125; 1955 c 35 § 62.01.125; prior: 1899 c 149 § 125; RRS § 3515.]

62A.3-408 Consideration. Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (RCW 62A.3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this Title under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount. [1965 ex.s. c 157 § 3-408. Cf. former RCW sections: (i) RCW 62.01.024; 1955 c 35 § 62.01.024; prior: 1899 c 149 § 24; RRS § 3415. (ii) RCW 62.01.025; 1955 c 35 § 62.01.025; prior: 1899 c 149 § 25; RRS § 3416. (iii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419.]

62A.3-409 Draft not an assignment. (1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance. [1965 ex.s. c 157 § 3-409. Cf. former RCW sections: (i) RCW 62.01.127; 1955 c 35 § 62.01.127; prior: 1899 c 149 § 127; RRS § 3517. (ii) RCW 62.01.189; 1955 c 35 § 62.01.189; prior: 1899 c 149 § 189; RRS § 3579.]

62A.3-410 Definition and operation of acceptance.

(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith. [1965 ex.s. c 157 § 3-410. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.132 through 62.01.138; 1955 c 35 §§ 62.01.132 through 62.01.138; prior: 1899 c 149 §§ 132 through 138; RRS §§ 3522 through 3528. (iii) RCW 62.01.161 through 62.01.170; 1955 c 35 §§ 62.01.161 through 62.01.170; prior: 1899 c 149 §§ 161 through 170; RRS §§ 3551 through 3560. (iv) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

62A.3-411 Certification of a check. (1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged. [1965 ex.s. c 157 § 3-411. Cf. former RCW sections: (i) RCW 62.01.187; 1955 c 35 § 62.01.187; prior: 1899 c 149 § 187; RRS § 3577. (ii) RCW 62.01.188; 1955 c 35 § 62.01.188; prior: 1899 c 149 § 188; RRS § 3578.]

62A.3-412 Acceptance varying draft. (1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged. [1965 ex.s. c 157 § 3-412. Cf. former RCW sections: RCW 62.01.139 through 62.01.142; 1955 c 35 §§ 62.01.139 through 62.01.142; prior: 1899 c 149 §§ 139 through 142; RRS §§ 3529 through 3532.]

62A.3-413 Contract of maker, drawer and acceptor.

(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to RCW 62A.3-115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse. [1965 ex.s. c 157 § 3-413. Cf. former RCW sections: RCW 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 60 through 62; RRS §§ 3451 through 3453.]

62A.3-414 Contract of indorser; order of liability.

(1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument. [1965 ex.s. c 157 § 3-414. Cf. former RCW sections: (i) RCW 62.01.038; 1955 c 35 § 62.01.038; prior: 1899 c 149 § 38; RRS § 3429. (ii) RCW 62.01.044; 1955 c 35 § 62.01.044; prior: 1899 c 149 § 44; RRS § 3435. (iii) RCW 62.01.066 through 62.01.068; 1955 c 35 §§ 62.01.066 through 62.01.068; prior: 1899 c 149 §§ 66 through 68; RRS §§ 3457 through 3459.]

62A.3-415 Contract of accommodation party. (1)

An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party. [1965 ex.s. c 157 § 3-415. Cf. former RCW sections: (i) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (ii) RCW 62.01.029; 1955 c 35 § 62.01.029; prior: 1899 c 149 § 29; RRS § 3420. (iii) RCW

62.01.064; 1955 c 35 § 62.01.064; prior: 1899 c 149 § 64; RRS § 3455.]

62A.3-416 Contract of guarantor. (1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds. [1965 ex.s. c 157 § 3-416.]

62A.3-417 Warranties on presentment and transfer.

(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority. [1965 ex.s. c 157 § 3-417. Cf. former RCW sections: (i) RCW 62.01.065; 1955 c 35 § 62.01.065; prior: 1899 c 149 § 65; RRS § 3456. (ii) RCW 62.01.066; 1955 c 35 § 62.01.066; prior: 1899 c 149 § 66; RRS § 3457. (iii) RCW 62.01.069; 1955 c 35 § 62.01.069; prior: 1899 c 149 § 69; RRS § 3460.]

62A.3-418 Finality of payment or acceptance. Except for recovery of bank payments as provided in the Article on Bank Deposits and Collections (Article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment. [1965 ex.s. c 157 § 3-418. Cf. former RCW 62.01.062; 1955 c 35 § 62.01.062; prior: 1899 c 149 § 62; RRS § 3453.]

62A.3-419 Conversion of instrument; innocent representative. (1) An instrument is converted when

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this Title concerning restrictive indorsements a representative, including a depository or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or

otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depository bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (RCW 62A.3-205 and RCW 62A.3-206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor. [1965 ex.s. c 157 § 3-419. Cf. former RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527.]

PART 5

PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

62A.3-501 When presentment, notice of dishonor, and protest necessary or permissible. (1) Unless excused (RCW 62A.3-511) presentment is necessary to charge secondary parties as follows:

(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any indorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in RCW 62A.3-502(1)(b).

(2) Unless excused (RCW 62A.3-511)

(a) notice of any dishonor is necessary to charge any indorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in RCW 62A.3-502(1)(b).

(3) Unless excused (RCW 62A.3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity. [1965 ex.s. c 157 § 3-501. Cf. former RCW sections: RCW 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; 1955 c 35 §§ 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; prior: 1899 c 149 §§ 70, 89, 118, 129, 143, 144, 150, 151, 152, 157,

158, and 186; RRS §§ 3461, 3479, 3508, 3519, 3533, 3534, 3540, 3541, 3542, 3547, 3548, and 3576.]

62A.3-502 Unexcused delay; discharge. (1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(a) any indorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged. [1965 ex.s. c 157 § 3-502. Cf. former RCW sections: RCW 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; 1955 c 35 §§ 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; prior: 1899 c 149 §§ 7, 70, 89, 144, 150, 152, and 186; RRS §§ 3398, 3461, 3479, 3534, 3540, 3542, and 3576.]

62A.3-503 Time of presentment. (1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(b) with respect to the liability of an endorser, seven days after his indorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day. [1965 ex.s. c 157 § 3-503. Cf. former RCW sections: (i) RCW 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; 1955 c 35 §§ 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; prior: 1899 c 149 §§ 71, 72, 75, 86, 144, 145, 146, 186, and 193; RRS §§ 3462, 3463, 3466, 3476, 3534, 3535, 3536, 3576, and 3583. (ii) RCW 62.01.085; 1955 c 35 § 62.01.085; prior: 1915 c 173 § 1; 1899 c 149 § 85; RRS § 3475 1/2.]

62A.3-504 How presentment made. (1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in RCW 62A.4-210 presentment may be made in the manner and with the result stated in that section. [1965 ex.s. c 157 § 3-504. Cf. former RCW sections: RCW 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; 1955 c 35 §§ 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; prior: 1899 c 149 §§ 72, 73, 77, 78, and 145; RRS §§ 3463, 3464, 3468, 3469, and 3535.]

62A.3-505 Rights of party to whom presentment is made. (1) The party to whom presentment is made may without dishonor require

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance. [1965 ex.s. c 157 § 3-505. Cf. former RCW sections: (i) RCW 62.01.072(3); 1955 c 35 § 62.01.072;

prior: 1899 c 149 § 72; RRS § 3463. (ii) RCW 62.01.074; 1955 c 35 § 62.01.074; prior: 1899 c 149 § 74; RRS § 3465. (iii) RCW 62.01.133; 1955 c 35 § 62.01.133; prior: 1899 c 149 § 133; RRS § 3523.]

62A.3-506 Time allowed for acceptance or payment.

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment. [1965 ex.s. c 157 § 3-506. Cf. former RCW 62.01.136; 1955 c 35 § 62.01.136; prior: 1899 c 149 § 136; RRS § 3526.]

62A.3-507 Dishonor; holder's right of recourse; term allowing re-presentment. (1) An instrument is dishonored when

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (RCW 62A.4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time. [1965 ex.s. c 157 § 3-507. Cf. former RCW sections: RCW 62.01.083, 62.01.084, 62.01.149, and 62.01.151; 1955 c 35 §§ 62.01.083, 62.01.084, 62.01.149, and 62.01.151; prior: 1899 c 149 §§ 83, 84, 149, and 151; RRS §§ 3474, 3475, 3539, and 3541.]

62A.3-508 Notice of dishonor. (1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified. [1965 ex.s. c 157 § 3-508. Cf. former RCW sections: RCW 62.01.090 through 62.01.108; 1955 c 35 §§ 62-01.090 through 62.01.108; prior: 1899 c 149 §§ 90 through 108; RRS §§ 3480 through 3498.]

62A.3-509 Protest; noting for protest. (1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting. [1965 ex.s. c 157 § 3-509. Cf. former RCW sections: (i) RCW 62.01.153 through 62.01.156; 1955 c 35 §§ 62.01.153 through 62.01.156; prior: 1899 c 149 §§ 153 through 156; RRS §§ 3543 through 3546. (ii) RCW 62.01.158; 1955 c 35 § 62.01.158; prior: 1899 c 149 § 158; RRS § 3548. (iii) RCW 62.01.160; 1955 c 35 § 62.01.160; prior: 1899 c 149 § 160; RRS § 3550.]

62A.3-510 Evidence of dishonor and notice of dishonor. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry. [1965 ex.s. c 157 § 3-510.]

62A.3-511 Waived or excused presentment, protest or notice of dishonor or delay therein. (1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only. [1965 ex.s. c 157 § 3-511. Cf. former RCW sections: (i) RCW 62.01.076; 1955 c 35 § 62.01.076; prior: 1899 c 149 § 76; RRS § 3467. (ii) RCW 62.01.079 through 62.01.082; 1955 c 35 §§ 62.01.079 through 62.01.082; prior: 1899 c 149 §§ 79 through 82; RRS §§ 3470 through 3473. (iii) RCW 62.01.109 through 62.01.116; 1955 c 35 §§ 62.01.109 through 62.01.116; prior: 1899 c 149 §§ 109 through 116; RRS §§ 3499 through 3506. (iv) RCW 62.01.130, 62.01.147, 62.01.148, 62.01.150, 62.01.151, and 62.01.159; 1955 c 35 §§ 62.01.130, 62.01.147, 62.01.148, 62.01.150, 62.01.151, and 62.01.159; prior: 1899 c 149 §§ 130, 147, 148, 150, 151, and 159; RRS §§ 3520, 3537, 3538, 3540, 3541, and 3549.]

62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys fees. Whenever a check as defined in RCW 62A.3-104 has been dishonored by nonacceptance or nonpayment and has not been paid within fifteen days

and after the holder of such check sends such notice of dishonor as provided by RCW 62A.3-520 to the drawer at his last known address, then if the instrument does not provide for the payment of interest, or collection costs and attorneys fees, the drawer of such instrument shall also be liable for payment of interest at the rate of twelve percent per annum from the date of dishonor and cost of collection not to exceed twenty dollars or the face amount of the check, whichever is the lesser. In addition, in the event of court action on the check the court, after such notice and the expiration of said fifteen days, shall award a reasonable attorneys fee as part of the damages payable to the holder of the check. This section shall not apply to any instrument which has been dishonored by reason of any justifiable stop payment order. [1969 c 62 § 1; 1967 ex.s. c 23 § 1.]

~~Savings~~—~~Severability~~—1967 ex.s. c 23: See notes following RCW 19.52.005.

62A.3-520 Statutory form for notice of dishonor. The notice of dishonor shall be sent by certified mail to the drawer at his last known address, and said notice shall be substantially in the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to ----- in the amount of ----- has not been accepted for payment by -----, which is the drawee bank designated on your check. This check is dated -----, and it is numbered, No. -----.

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

(1) costs of collecting the amount of the check, including an attorney's fee which will be set by the court; and

(2) interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor.

You are advised to make your payment to ----- at the following address: -----

[1969 c 62 § 2.]

62A.3-525 Consequences for failing to comply with requirements. No interest, collection costs and attorneys' fees shall be recovered on any dishonored check under the provisions of RCW 62A.3-515 where the holder of such check or any agent, employee or assign of the holder has demanded:

(1) interest or collection costs in excess of that provided by RCW 62A.3-515; or

(2) interest or collection costs prior to the expiration of fifteen days after the certified mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520; or

(3) attorneys' fees either without having such fees set by the court, or prior to the expiration of fifteen days after the certified mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520. [1969 c 62 § 3.]

**PART 6
DISCHARGE**

62A.3-601 Discharge of parties. (1) The extent of the discharge of any party from liability on an instrument is governed by the sections on

(a) payment or satisfaction (RCW 62A.3-603); or

(b) tender of payment (RCW 62A.3-604); or

(c) cancellation or renunciation (RCW 62A.3-605); or

(d) impairment of right of recourse or of collateral (RCW 62A.3-606); or

(e) reacquisition of the instrument by a prior party (RCW 62A.3-208); or

(f) fraudulent and material alteration (RCW 62A.3-407); or

(g) certification of a check (RCW 62A.3-411); or

(h) acceptance varying a draft (RCW 62A.3-412); or

(i) unexcused delay in presentment or notice of dishonor or protest (RCW 62A.3-502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

(a) reacquires the instrument in his own right; or

(b) is discharged under any provision of this Article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (RCW 62A.3-606). [1965 ex.s. c 157 § 3-601. Cf. former RCW sections: RCW 62.01.119 through 62.01.121; 1955 c 35 §§ 62.01.119 through 62.01.121; prior: 1899 c 149 §§ 119 through 121; RRS §§ 3509 through 3511.]

62A.3-602 Effect of discharge against holder in due course. No discharge of any party provided by this Article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument. [1965 ex.s. c 157 § 3-602. Cf. former RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

62A.3-603 Payment or satisfaction. (1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or

satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (RCW 62A.3-201). [1965 ex.s. c 157 § 3-603. Cf. former RCW sections: (i) RCW 62.01.051, 62.01.088, 62.01.119, and 62.01.121; 1955 c 35 §§ 62.01.051, 62.01.088, 62.01.119, and 62.01.121; prior: 1899 c 149 §§ 51, 88, 119, and 121; RRS §§ 3442, 3478, 3509, and 3511. (ii) RCW 62.01.171 through 62.01.177; 1955 c 35 §§ 62.01.171 through 62.01.177; prior: 1899 c 149 §§ 171 through 177; RRS §§ 3561 through 3567. (iii) Subd. (3) cf. former RCW 30.20.090; 1961 c 280 § 4.]

62A.3-604 Tender of payment. (1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender. [1965 ex.s. c 157 § 3-604. Cf. former RCW sections: (i) RCW 62.01.070; 1955 c 35 § 62.01.070; prior: 1899 c 149 § 70; RRS § 3461. (ii) RCW 62.01.120; 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510.]

62A.3-605 Cancellation and renunciation. (1) The holder of an instrument may even without consideration discharge any party

(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto. [1965 ex.s. c 157 § 3-605. Cf. former RCW sections: RCW 62.01.048, 62.01.119(3), 62.01.120(2), 62.01.122, and 62.01.123; 1955 c 35 §§ 62.01.048, 62.01.119, 62.01.120, 62.01.122, and 62.01.123; prior: 1899 c 149 §§ 48, 119, 120, 122, and 123; RRS §§ 3439, 3509, 3510, 3512, and 3513.]

62A.3-606 Impairment of recourse or of collateral. (1) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with

respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others. [1965 ex.s. c 157 § 3-606. Cf. former RCW sections: (i) RCW 62.01.119; 1955 c 35 § 62.01.119; prior: 1899 c 149 § 119; RRS § 3509. (ii) RCW 62.01.120; 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510.]

PART 7

ADVICE OF INTERNATIONAL SIGHT DRAFT

62A.3-701 Letter of advice of international sight draft. (1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account. [1965 ex.s. c 157 § 3-701.]

PART 8 MISCELLANEOUS

62A.3-801 Drafts in a set. (1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of

any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (RCW 62A.4-407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged. [1965 ex.s. c 157 § 3-801. Cf. former RCW sections: RCW 62.01.178 through 62.01.183; 1955 c 35 §§ 62.01.178 through 62.01.183; prior: 1899 c 149 §§ 178 through 183; RRS §§ 3568 through 3573.]

62A.3-802 Effect of instrument on obligation for which it is given. (1) Unless otherwise agreed where an instrument is taken for an underlying obligation

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety. [1965 ex.s. c 157 § 3-802.]

62A.3-803 Notice to third party. Where a defendant is sued for breach of an obligation for which a third person is answerable over under this Article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this Article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after reasonable receipt of the notice the person notified does come in and defend he is so bound. [1965 ex.s. c 157 § 3-803.]

62A.3-804 Lost, destroyed or stolen instruments. The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument. [1965 ex.s. c 157 § 3-804.]

62A.3-805 Instruments not payable to order or to bearer. This Article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this Article but which is not payable to order or to bearer, except that there can be no holder in

due course of such an instrument. [1965 ex.s. c 157 § 3-805.]

Article 4

BANK DEPOSITS AND COLLECTIONS

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ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

PART 1

GENERAL PROVISIONS AND DEFINITIONS

62A.4-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections. [1965 ex.s. c 157 § 4-101.]

62A.4-102 Applicability. (1) To the extent that items within this Article are also within the scope of Articles 3 and 8, they are subject to the provisions of those Articles. In the event of conflict the provisions of this Article govern those of Article 3 but the provisions of Article 8 govern those of this Article.

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. [1965 ex.s. c 157 § 4-102.]

62A.4-103 Variation by agreement; measure of damages; certain action constituting ordinary care. (1) The effect of the provisions of this Article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this Article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this Article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence. [1965 ex.s. c 157 § 4-103. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1931 c 10 § 1; 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

62A.4-104 Definitions and index of definitions. (1)

In this Article unless the context otherwise requires

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearing house" means any association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(f) "Documentary draft" means any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Collecting bank" RCW 62A.4-105.

"Depository bank" RCW 62A.4-105.

"Intermediary bank" RCW 62A.4-105.

"Payor bank" RCW 62A.4-105.

"Presenting bank" RCW 62A.4-105.

"Remitting bank" RCW 62A.4-105.

(3) The following definitions in other Articles apply to this Article:

"Acceptance" RCW 62A.3-410.

"Certificate of deposit" RCW 62A.3-104.

"Certification" RCW 62A.3-411.

"Check" RCW 62A.3-104.

"Draft" RCW 62A.3-104.

"Holder in due course" RCW 62A.3-302.

"Notice of dishonor" RCW 62A.3-508.

"Presentment" RCW 62A.3-504.

"Protest" RCW 62A.3-509.

"Secondary party" RCW 62A.3-102.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 4-104. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1.]

62A.4-105 "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank". In this Article unless the context otherwise requires:

(a) "Depository bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

(b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depository or payor bank;

(d) "Collecting bank" means any bank handling the item for collection except the payor bank;

(e) "Presenting bank" means any bank presenting an item except a payor bank;

(f) "Remitting bank" means any payor or intermediary bank remitting for an item. [1965 ex.s. c 157 § 4-105. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1.]

62A.4-106 Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this Article and under Article 3. [1965 ex.s. c 157 § 4-106. Cf. former RCW sections: (i) RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1. (ii) RCW 30.40.030 through 30.40.050; 1955 c 33 §§ 30.40.030 through 30.40.050; prior: 1939 c 59 §§ 1 through 3; RRS §§ 3252-6 through 3252-8.]

62A.4-107 Time of receipt of items. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. [1965 ex.s. c 157 § 4-107.]

62A.4-108 Delays. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this Title for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Title or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require. [1965 ex.s. c 157 § 4-108.]

62A.4-109 Process of posting. The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(a) verification of any signature;

(b) ascertaining that sufficient funds are available;

(c) affixing a "paid" or other stamp;

(d) entering a charge or entry to a customer's account;

(e) correcting or reversing an entry or erroneous action with respect to the item. [1965 ex.s. c 157 § 4-109.]

PART 2 COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS

62A.4-201 Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of Article; item indorsed "pay any bank". (1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of RCW 62A.4-211 and RCW 62A.4-212 and RCW 62A.4-213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this Article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially indorsed by a bank to a person who is not a bank. [1965 ex.s. c 157 § 4-201. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

62A.4-202 Responsibility for collection; when action seasonable. (1) A collecting bank must use ordinary care in

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depository bank under subsection (2) of RCW 62A.4-212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others. [1965 ex.s. c 157 § 4-202. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

62A.4-203 Effect of instructions. Subject to the provisions of Article 3 concerning conversion of instruments (RCW 62A.3-419) and the provisions of both Article 3 and this Article concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor. [1965 ex.s. c 157 § 4-203. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

62A.4-204 Methods of sending and presenting; sending direct to payor bank. (1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send

(a) any item direct to the payor bank;

(b) any item to any non-bank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any non-bank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made. [1965 ex.s. c 157 § 4-204. Cf. former RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

62A.4-205 Supplying missing indorsement; no notice from prior indorsement. (1) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(2) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor. [1965 ex.s. c 157 § 4-205.]

62A.4-206 Transfer between banks. Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank. [1965 ex.s. c 157 § 4-206.]

62A.4-207 Warranties of customer and collecting bank on transfer or presentment of items; time for claims. (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even

though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim. [1965 ex.s. c 157 § 4-207. Cf. former RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

62A.4-208 Security interest of collecting bank in items, accompanying documents and proceeds. (1) A bank has a security interest in an item and any accompanying documents or the proceeds of either

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or

accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Article 9 except that

(a) no security agreement is necessary to make the security interest enforceable (subsection (1)(b) of RCW 62A.9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds. [1965 ex.s. c 157 § 4-208. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

62A.4-209 When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. [1965 ex.s. c 157 § 4-209. Cf. former RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418.]

62A.4-210 Presentment by notice of item not payable by, through or at a bank; liability of secondary parties. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under RCW 62A.3-505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under RCW 62A.3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts. [1965 ex.s. c 157 § 4-210.]

62A.4-211 Media of remittance; provisional and final settlement in remittance cases. (1) A collecting bank may take in settlement of an item

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization

to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by sub-paragraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline. [1965 ex.s. c 157 § 4-211. Cf. former RCW sections: (i) RCW 30.52.090; 1955 c 33 § 30.52.090; prior: 1929 c 203 § 9; RRS § 3292-9. (ii) RCW 30.52.100; 1955 c 33 § 30.52.100; prior: 1929 c 203 § 10; RRS § 3292-10.]

62A.4-212 Right of charge-back or refund. (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of RCW 62A.4-211 and subsections (2) and (3) of RCW 62A.4-213).

(2) Within the time and manner prescribed by this section and RCW 62A.4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depository bank and may send for collection a draft on the depository bank and obtain reimbursement. In such case, if the depository bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional

credits for the item between banks shall become and remain final.

(3) A depository bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (RCW 62A.4-301)

(4) The right to charge-back is not affected by

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. [1965 ex.s. c 157 § 4-212. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

62A.4-213 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal. (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or

(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of RCW 62A.4-211, subsection (2) of RCW 62A.4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a

bank for an item in an account with its customer becomes available for withdrawal as of right

(a) in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depository bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit. [1965 ex.s. c 157 § 4-213. Cf. former RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

62A.4-214 Insolvency and preference. (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of RCW 62A.4-211, subsections (1)(d), (2) and (3) of RCW 62A.4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank. [1965 ex.s. c 157 § 4-214. Cf. former RCW 30.52.130; 1955 c 33 § 30.52.130; prior: 1929 c 203 § 13; RRS § 3292-13.]

Insolvency—Preferences prohibited: RCW 30.44.110.

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

62A.4-301 Deferred posting; recovery of payment by return of items; time of dishonor. (1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of RCW 62A.4-213) and before its midnight deadline it

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions. [1965 ex.s. c 157 § 4-301. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

62A.4-302 Payor bank's responsibility for late return of item. In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of RCW 62A.4-207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents. [1965 ex.s. c 157 § 4-302. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

62A.4-303 When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified. (1) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

(a) accepted or certified the item;

(b) paid the item in cash;

(c) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;

(d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(e) become accountable for the amount of the item under subsection (1)(d) of RCW 62A.4-213 and RCW 62A.4-302 dealing with the payor bank's responsibility for late return of items.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank. [1965 ex.s. c 157 § 4-303.]

PART 4

RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

62A.4-401 When bank may charge customer's account. (1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

(a) the original tenor of his altered item; or

(b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper. [1965 ex.s. c 157 § 4-401.]

62A.4-402 Bank's liability to customer for wrongful dishonor. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case. [1965 ex.s. c 157 § 4-402.]

62A.4-403 Customer's right to stop payment; burden of proof of loss. (1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in RCW 62A.4-303.

(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer. [1965 ex.s. c 157 § 4-403. Cf. former RCW sections: (i) RCW 30.16.030; 1959 c 106 § 4; 1955 c 33 § 30.16.030; prior: 1923 c 114 §§ 1, part, and 2; RRS §§ 3252-1, part, and 3252-2. (ii) RCW 30.16.040; 1955 c 33 § 30.16.040;

prior: 1923 c 114 §§ 1, part, and 3; RRS §§ 3252-1, part, and 3252-3.]

62A.4-404 Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith. [1965 ex.s. c 157 § 4-404. Cf. former RCW 30.16.050; 1955 c 33 § 30.16.050; prior: 1923 c 114 §§ 1, part, and 5; RRS §§ 3252-1, part, and 3252-5.]

62A.4-405 Death or incompetence of customer. (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account. [1965 ex.s. c 157 § 4-405. Cf. former RCW 30.20.030; 1955 c 33 § 30.20.030; prior: 1917 c 80 § 43; RRS § 3250.]

62A.4-406 Customer's duty to discover and report unauthorized signature or alteration. (1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not

within sixty days from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim. [1967 c 114 § 1; 1965 ex.s. c 157 § 4-406. Cf. former RCW 30.16.020; 1955 c 33 § 30.16-020; prior: 1917 c 80 § 45; RRS § 3252.]

Emergency—Effective date—1967 c 114. "This 1967 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and sections 1 through 11 and 13 through 16 shall take effect on June 30, 1967, and section 12 shall take effect immediately." [1967 c 114 § 17.]

Reviser's note: Sections 1 through 11 and 13 through 16 are codified as RCW 15.48.270, 15.48.280, 15.48.290, 62A.2-403, 62A.2-706, 62A.4-406, 62A.6-102, 62A.6-109, 62A.9-302, 62A.9-403, 62A.9-404, 62A.9-405, 62A.9-406, 62A.9-407 and 62A.9-408. Section 12 is codified as RCW 62A.9-409.

62A.4-407 Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose. [1965 ex.s. c 157 § 4-407.]

PART 5

COLLECTION OF DOCUMENTARY DRAFTS

62A.4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or brought the draft or extended credit available for withdrawal as of right. [1965 ex.s. c 157 § 4-501.]

62A.4-502 Presentment of "on arrival" drafts. When a draft or the relevant instructions require presentment

"on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods. [1965 ex.s. c 157 § 4-502.]

62A.4-503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need. Unless otherwise instructed and except as provided in Article 5 a bank presenting a documentary draft

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses. [1965 ex.s. c 157 § 4-503. Cf. former RCW 62.01.131(3); 1955 c 35 § 62.01.131; prior: 1899 c 149 § 131; RRS § 3521.]

62A.4-504 Privilege of presenting bank to deal with goods; security interest for expenses. (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. [1965 ex.s. c 157 § 4-504.]

Article 5

LETTERS OF CREDIT

Sections

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ARTICLE 5 LETTERS OF CREDIT

62A.5-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Letters of Credit. [1965 ex.s. c 157 § 5-101.]

62A.5-102 Scope. (1) This Article applies

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this Article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This Article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act or may hereafter develop. The fact that this Article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this Article. [1965 ex.s. c 157 § 5-102.]

62A.5-103 Definitions. (1) In this Article unless the context otherwise requires

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this Article (RCW 62A.5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Notation of credit". RCW 62A.5-108.

"Presenter". RCW 62A.5-112(3).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance". RCW 62A.3-410.

"Contract for sale". RCW 62A.2-106.

"Draft". RCW 62A.3-104.

"Holder in due course". RCW 62A.3-302.

"Midnight deadline". RCW 62A.4-104.

"Security". RCW 62A.8-102.

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 5-103.]

62A.5-104 Formal requirements; signing. (1) Except as otherwise required in subsection (1)(c) of RCW 62A.5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing. [1965 ex.s. c 157 § 5-104.]

62A.5-105 Consideration. No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms. [1965 ex.s. c 157 § 5-105.]

62A.5-106 Time and effect of establishment of credit. (1) Unless otherwise agreed a credit is established:

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer

without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer. [1965 ex.s. c 157 § 5-106.]

62A.5-107 Advice of credit; confirmation; error in statement of terms. (1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit. [1965 ex.s. c 157 § 5-107.]

62A.5-108 "Notation credit"; exhaustion of credit. (1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

(2) Under a notation credit

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(3) If the credit is not a notation credit

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored. [1965 ex.s. c 157 § 5-108.]

62A.5-109 Issuer's obligation to its customer. (1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge. [1965 ex.s. c 157 § 5-109.]

62A.5-110 Availability of credit in portions; presenter's reservation of lien or claim. (1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand non-complying. [1965 ex.s. c 157 § 5-110.]

62A.5-111 Warranties on transfer and presentment. (1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Articles 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Articles 7 and 8. [1965 ex.s. c 157 § 5-111.]

62A.5-112 Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter". (1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit except as otherwise provided in subsection (4) of RCW 62A.5-114 on conditional payment.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization. [1965 ex.s. c 157 § 5-112. Cf. former RCW sections: (i) RCW 62.01.136; 1955 c 35 § 62.01.136; prior: 1899 c 149 § 136; RRS § 3526. (ii) RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527. (iii) RCW 62.01.150; 1955 c 35 § 62.01.150; prior: 1899 c 149 § 150; RRS § 3540.]

62A.5-113 Indemnities. (1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline. [1965 ex.s. c 157 § 5-113.]

62A.5-114 Issuer's duty and privilege to honor; right to reimbursement. (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (RCW 62A.7-507) or of a security (RCW 62A.8-306) or is forged or fraudulent or there is fraud in the transaction

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (RCW 62A.3-302) and in an appropriate case would make it a person to whom a document of title has been

duly negotiated (RCW 62A.7-502) or a bona fide purchaser of a security (RCW 62A.8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

(a) any payment made on receipt of such notice is conditional; and

(b) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in subparagraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary. [1965 ex.s. c 157 § 5-114.]

62A.5-115 Remedy for improper dishonor or anticipatory repudiation. (1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (RCW 62A.2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under RCW 62A.2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under RCW 62A.2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor. [1965 ex.s. c 157 § 5-115.]

62A.5-116 Transfer and assignment. (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may

before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under Article 9 on Secured Transactions and is governed by that Article except that

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit. [1965 ex.s. c 157 § 5-116. Subd. (2)(b) cf. former RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

62A.5-117 Insolvency of bank holding funds for documentary credit. (1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this Article is made applicable by paragraphs (a) or (b) of RCW 62A.5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved. [1965 ex.s. c 157 § 5-117.]

Article 6 BULK TRANSFERS

Sections

62A.6-101	Short title.
62A.6-102	"Bulk transfer"; transfers of equipment; enterprises subject to this Article; bulk transfers subject to this Article.
62A.6-103	Transfers excepted from this Article.
62A.6-104	Schedule of property, list of creditors.
62A.6-105	Notice to creditors—Exceptions.
62A.6-106	Application of the proceeds.
62A.6-107	The notice.
62A.6-108	Auction sales; "auctioneer".
62A.6-109	What creditors protected; credit for payment to particular creditors.
62A.6-110	Subsequent transfers.
62A.6-111	Limitation of actions and levies.

ARTICLE 6 BULK TRANSFERS

62A.6-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Bulk Transfers. [1965 ex.s. c 157 § 6-101.]

62A.6-102 "Bulk transfer"; transfers of equipment; enterprises subject to this Article; bulk transfers subject to this Article. (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (RCW 62A.9-109) of an enterprise subject to this Article.

(2) A transfer of all or substantially all of the equipment (RCW 62A.9-109) of such an enterprise is a bulk transfer whether or not made in connection with a bulk transfer of inventory, merchandise, materials or supplies.

(3) The enterprises subject to this Article are all those of a vendor engaged in the business of buying and selling and dealing in goods, wares or merchandise, of any kind or description, or in the business of operating a restaurant, cafe, beer parlor, tavern, hotel, club or gasoline service station.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this Article. [1967 c 114 § 2; 1965 ex.s. c 157 § 6-102. Cf. former RCW 63.08.010; 1939 c 122 § 4; 1925 ex.s. c 135 § 1; RRS § 5835; prior: 1913 c 175 § 4; 1901 c 109 §§ 4, 5.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.6-103 Transfers excepted from this Article. The following transfers are not subject to this Article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interests;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution;

(9) Any sale subject to public auction on lien foreclosures.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer. [1965 ex.s. c 157 § 6-103. Cf. former RCW 63.08.010; 1939 c 122 § 4; 1925 ex.s. c 135 § 1; RRS § 5835; prior: 1913 c 175 § 4; 1901 c 109 §§ 4, 5.]

62A.6-104 Schedule of property, list of creditors. (1) Except as provided with respect to auction sales (RCW 62A.6-108), a bulk transfer subject to this Article is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, and files the list and schedule in the office of the county auditor of the county in which the property transferred is located and serves it upon the office of the state department of revenue; the list and schedule shall be indexed as chattel mortgages are indexed, the name of the vendor being indexed as mortgagor and the name of the intending purchaser as mortgagee.

(2) The list of creditors and the schedule must be signed and sworn to by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge. [1975 1st ex.s. c 278 § 33; 1965 ex.s. c 157 § 6-104. Cf. former RCW sections: (i) RCW 63.08.020; 1953 c 247 § 1; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part. (ii) RCW 63.08-.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part. (iii) RCW 63-.08.050; 1953 c 247 § 4; 1939 c 122 § 2; 1925 ex.s. c 135 § 3; RRS § 5833; prior: 1901 c 109 § 2. (iv) RCW 63-.08.060; 1939 c 122 § 3; 1925 ex.s. c 135 § 4; RRS § 5834; prior: 1901 c 109 § 3.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

62A.6-105 Notice to creditors—Exceptions. In addition to the requirements of the preceding section, any bulk transfer subject to this Article except:

(1) One made by auction sale (RCW 62A.6-108), or

(2) If the sale proceeds are impounded in gross in the hands of a bank or licensed escrow agent or attorney, to be held until directed by the transferee for application under RCW 62A.6-106, and in any event so to be held in escrow for not less than thirty days following the date of giving of notice under RCW 62A.6-107, is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (RCW 62A.6-107). [1971 c 23 § 1; 1965 ex.s. c 157 § 6-105. Cf. former RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

62A.6-106 Application of the proceeds. In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this Article for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (RCW 62A.6-104) or filed in writing in the place stated in the notice (RCW 62A.6-107) within thirty days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

(4) The transferee may within ten days after he takes possession of the goods pay the consideration into the superior court in the county where the transferor had its principal place of business in this state and thereafter

may discharge his duty under this section by giving notice by registered or certified mail to all the persons to whom the duty runs that the consideration has been paid into that court and that they should file their claims there. On motion of any interested party, the court may order the distribution of the consideration to the persons entitled to it. [1965 ex.s. c 157 § 6-106. Cf. former RCW 63.08.050; 1953 c 247 § 4; 1939 c 122 § 2; 1925 ex.s. c 135 § 3; RRS § 5833; prior: 1901 c 109 § 2.]

62A.6-107 The notice. (1) The notice to creditors (RCW 62A.6-105) shall state:

- (a) that a bulk transfer is about to be made; and
- (b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and
- (c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

- (a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;
- (b) the address where the schedule of property and list of creditors (RCW 62A.6-104) may be inspected;
- (c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;
- (d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and
- (e) if for new consideration the time and place where creditors of the transferor are to file their claims.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (RCW 62A.6-104), to all other persons who are known to the transferee to hold or assert claims against the transferor, and to the office of the state department of revenue. A copy of the notice shall be filed in the office of the county auditor of the county in which the property transferred is located and indexed as chattel mortgages are indexed, the name of the vendor being indexed as mortgagor and the name of the intending purchaser as mortgagee. [1975 1st ex.s. c 278 § 34; 1965 ex.s. c 157 § 6-107. Cf. former RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

62A.6-108 Auction sales; "auctioneer". (1) A bulk transfer is subject to this Article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (RCW 62A.6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this Article (RCW 62A.6-104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) assure that the net proceeds of the auction are applied as provided in this Article (RCW 62A.6-106).

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several. [1965 ex.s. c 157 § 6-108.]

Auctioneers: Chapter 18.11 RCW.

Auctions of jewelry or appliances: Chapter 18.12 RCW.

62A.6-109 What creditors protected; credit for payment to particular creditors. (1) The creditors of the transferor (or claimants against the transferor) mentioned in this Article are those to whom the transferor is indebted for or on account of services, commodities, goods, wares, or merchandise, or fixtures and equipment, used in or furnished to the business of the transferor, or for or on account of money borrowed to carry on the business of the transferor or for or on account of labor employed in the course of the business of the transferor, of which the goods, wares and merchandise, or fixtures and equipment, bargained for or purchased are a part. Creditors who become such after notice to creditors is given (RCW 62A.6-105 and RCW 62A.6-107) are not entitled to notice.

(2) Against the aggregate obligation imposed by the provisions of this Article concerning the application of the proceeds (RCW 62A.6-106 and subsection (3)(c) of RCW 62A.6-108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors. [1967 c 114 § 3; 1965 ex.s. c 157 § 6-109. Cf. former RCW sections: (i) RCW 63.08.020; 1953 c 247 § 1; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part; (ii) RCW 63.08-.050; 1953 c 247 § 4; 1939 c 122 § 2; 1925 ex.s. c 135 § 3; RRS § 5833; prior: 1901 c 109 § 2.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.6-110 Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this Article, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect. [1965 ex.s. c 157 § 6-110.]

62A.6-111 Limitation of actions and levies. No action under this Article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery. [1965 ex.s. c 157 § 6-111.]

Article 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

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PART 4 WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

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62A.7-402	Duplicate receipt or bill; overissue.
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PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

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PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

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ARTICLE 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

PART 1 GENERAL

62A.7-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Documents of Title. [1965 ex.s. c 157 § 7-101.]

62A.7-102 Definitions and index of definitions. (1) In this Article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article 1 (RCW 62A.1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the

agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Duly negotiate". RCW 62A.7-501.

"Person entitled under the document". RCW 62A.7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale". RCW 62A.2-106.

"Overseas". RCW 62A.2-323.

"Receipt" of goods. RCW 62A.2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 7-102. Cf. former RCW sections: (i) RCW 22.04.585(1); 1913 c 99 § 58; RRS § 3644; formerly RCW 22.04.010. (ii) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (iii) RCW 81.32-.011; 1961 c 14 § 81.32.011; prior: 1915 c 159 § 1; RRS § 3647; formerly RCW 81.32.020. (iv) RCW 81.32.531(1); 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-103 Relation of Article to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto. [1965 ex.s. c 157 § 7-103.]

62A.7-104 Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title. (1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. [1965 ex.s. c 157 § 7-104. Cf. former RCW sections: (i) RCW 22.04.030, 22.04.050, and 22.04.060; 1913 c 99 §§ 2, 4, and 5; RRS §§ 3588, 3590, and 3591; prior: 1891 c 134 §§ 5 and 8. (ii) RCW 22.04.040 and 22.04-.080; 1913 c 99 §§ 3, 7; RRS §§ 3589, 3593. (iii) RCW 63.04.280 and 63.04.310; 1925 ex.s. c 142 §§ 27 and 30; RRS §§ 5836-27 and 5836-30. (iv) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (v) RCW 81.32.021 through 81.32.051, and 81.32.081; 1961 c 14 §§ 81.32.021 through 81.32.051, and 81.32.081; prior: 1915 c 159 §§ 2 through 5, and 8;

RRS §§ 3648 through 3651, and 3654; formerly RCW 81.32.030 through 81.32.060, and 81.32.090. (vi) RCW 81.32.531; 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-105 Construction against negative implication. The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable. [1965 ex.s. c 157 § 7-105.]

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

62A.7-201 Who may issue a warehouse receipt; storage under government bond. (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. [1965 ex.s. c 157 § 7-201. Cf. former RCW 22.04.020; 1913 c 99 § 1; RRS § 3587; prior: 1891 c 134 § 1.]

62A.7-202 Form of warehouse receipt; essential terms; optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (RCW 62A.7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Title and do not impair his obligation of delivery (RCW 62A.7-403) or his duty of care (RCW 62A.7-204). Any contrary provisions shall be ineffective. [1965 ex.s. c 157 § 7-202. Cf. former RCW sections: (i) RCW 22.04.030; 1913 c 99 § 2; RRS § 3588; prior: 1891 c 134 § 8. (ii) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589.]

62A.7-203 Liability for non-receipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. [1965 ex.s. c 157 § 7-203. Cf. former RCW 22.04.210; 1913 c 99 § 20; RRS § 3606.]

62A.7-204 Duty of care; contractual limitation of warehouseman's liability. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) This section does not impair or repeal the duties of care or liabilities or penalties for breach thereof as provided in chapters 22.09, 22.32, 81.92, and 81.94 RCW. [1965 ex.s. c 157 § 7-204. Cf. former RCW sections: (i) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589. (ii) RCW 22.04.220; 1913 c 99 § 21; RRS § 3607.]

62A.7-205 Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. [1965 ex.s. c 157 § 7-205.]

62A.7-206 Termination of storage at warehouseman's option. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (RCW 62A.7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. [1965 ex.s. c 157 § 7-206. Cf. former RCW 22.04.350; 1913 c 99 § 34; RRS § 3620.]

62A.7-207 Goods must be kept separate; fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of over-issue a mass of fungible goods is insufficient to meet all the receipts which the

warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. [1965 ex.s. c 157 § 7-207. Cf. former RCW sections: (i) RCW 22.04.230; 1913 c 99 § 22; RRS § 3608; prior: 1891 c 134 § 3. (ii) RCW 22.04.240; 1913 c 99 § 23; RRS § 3609.]

62A.7-208 Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. [1965 ex.s. c 157 § 7-208. Cf. former RCW 22.04.140; 1913 c 99 § 13; RRS § 3599.]

62A.7-209 Lien of warehouseman. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (Article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under RCW 62A.7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1965 ex.s. c 157 § 7-209. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

62A.7-210 Enforcement of warehouseman's lien. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on

any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this Article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights

of persons against whom the lien was valid, despite non-compliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-210. Cf. former RCW sections: RCW 22.04.340, 22.04.360, and 22.04.370; 1913 c 99 §§ 33, 35, and 36; RRS §§ 3619, 3621, and 3622.]

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

62A.7-301 Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling. (1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. [1965 ex.s. c 157 § 7-301. Cf. former RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-302 Through bills of lading and similar documents. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. [1965 ex.s. c 157 § 7-302.]

62A.7-303 Diversion; reconsignment; change of instructions. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms. [1965 ex.s. c 157 § 7-303.]

62A.7-304 Bills of lading in a set. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. [1965 ex.s. c 157 § 7-304. Cf. former RCW 81.32.061; 1961 c 14 § 81.32.061; prior: 1915 c 159 § 6; RRS § 3652; formerly RCW 81.32.070.]

62A.7-305 Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. [1965 ex.s. c 157 § 7-305.]

62A.7-306 Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. [1965 ex.s. c 157 § 7-306. Cf. former RCW 81.32.161; 1961 c 14 § 81.32.161; prior: 1915 c 159 § 16; RRS § 3662; formerly RCW 81.32.170.]

62A.7-307 Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1965 ex.s. c 157 § 7-307. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

62A.7-308 Enforcement of carrier's lien. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of RCW 62A.7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-308. Cf. former RCW 22.04.340; 1913 c 99 § 33; RRS § 3619.]

62A.7-309 Duty of care; contractual limitation of carrier's liability. Save as otherwise provided in RCW 81.29.010 and 81.29.020

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. [1965 ex.s. c 157 § 7-309. Cf. former RCW 81.32.031; 1961 c 14 § 81.32.031; prior: 1915 c 159 § 3; RRS § 3649; formerly RCW 81.32.040.]

Common carriers—Limitation on liability: Chapter 81.29 RCW.

PART 4 WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

62A.7-401 Irregularities in issue of receipt or bill of conduct of issuer. The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt. [1965 ex.s. c 157 § 7-401. Cf. former RCW sections: (i) RCW 22.04.210; 1913 c 99 § 20; RRS § 3606. (ii) RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-402 Duplicate receipt or bill; overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue

or failure to identify a duplicate document as such by conspicuous notation on its face. [1965 ex.s. c 157 § 7-402. Cf. former RCW sections: (i) RCW 22.04.070; 1913 c 99 § 6; RRS § 3592; prior: 1886 p 121 § 5. (ii) RCW 81.32.071; 1961 c 14 § 81.32.071; prior: 1915 c 159 § 7; RRS § 3653; formerly RCW 81.32.080.]

62A.7-403 Obligation of warehouseman or carrier to deliver; excuse. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (RCW 62A.2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this Article (RCW 62A.7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under RCW 62A.7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document. [1965 ex.s. c 157 § 7-403. Cf. former RCW sections: (i) RCW 22.04.090, and 22.04.100; 1913 c 99 §§ 8 and 9; RRS §§ 3594, and 3595; prior: 1891 c 134 §§ 6, and 7. (ii) RCW 22.04.110, 22.04.130, 22.04.170, and 22.04.200; 1913 c 99 §§ 10, 12, 16, and 19; RRS §§ 3596, 3598, 3602, and 3605. (iii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iv) RCW 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1961 c 14 §§ 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1915 c 159 §§ 11 through 15, 19, and 22; RRS §§ 3657 through 3661, 3665, and 3668; formerly RCW 81.32.120 through 81.32.160, 81.32.200, and 81.32.230.]

62A.7-404 No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of

them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. [1965 ex.s. c 157 § 7-404. Cf. former RCW sections: (i) RCW 22.04.110; 1913 c 99 § 10; RRS § 3596. (ii) RCW 81.32.131; 1961 c 14 § 81.32.131; prior: 1915 c 159 § 13; RRS § 3659; formerly RCW 81.32.140.]

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

62A.7-501 Form of negotiation and requirements of "due negotiation". (1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. [1965 ex.s. c 157 § 7-501. Cf. former RCW sections: (i) RCW 22.04.380 through 22.04.410, and 22.04.480; 1913 c 99 §§ 37 through 40, and 47; RRS §§ 3623 through 3626, and 3633. (ii) RCW 63.04.290, 63.04.300, 63.04.320, 63.04.330, and 63.04.390; 1925 ex.s. c 142 §§ 28, 29, 31, 32, and 38; RRS §§ 5836-28, 5836-29, 5836-31, 5836-32 and 5836-38. (iii) RCW 81.32.281 through 81.32.311, and 81.32.381; 1961 c 14 §§ 81.32.281 through 81.32.311, and 81.32.381; prior: 1915 c 159 §§ 28 through 31, and 38; RRS §§ 3674 through 3677, and 3684; formerly RCW 81.32.370 through 81.32.400, and 81.32.470.]

62A.7-502 Rights acquired by due negotiation. (1) Subject to the following section and to the provisions of RCW 62A.7-205 on fungible goods, a holder to whom a

negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. [1965 ex.s. c 157 § 7-502. Cf. former RCW sections: (i) RCW 22.04.420, and 22.04.480 through 22.04.500; 1913 c 99 §§ 41, and 47 through 49; RRS §§ 3627, and 3633 through 3635. (ii) RCW 63.04.210(4), 63.04.260, 63.04.340, 63.04.390, and 63.04.630; 1925 ex.s. c 142 §§ 20, 25, 33, 38, and 62; RRS §§ 5836-20, 5836-25, 5836-33, 5836-38, and 5836-62. (iii) RCW 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; 1961 c 14 §§ 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; prior: 1915 c 159 §§ 32, 38, 39, 40, and 42; RRS §§ 3678, 3684, 3685, 3686, and 3688; formerly RCW 81.32.410, 81.32.470, 81.32.480, 81.32.490, and 81.32.510.]

62A.7-503 Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (RCW 62A.7-403) or with power of disposition under this Title (RCW 62A.2-403 and RCW 62A.9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to

whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver. [1965 ex.s. c 157 § 7-503. Cf. former RCW sections: (i) RCW 22.04.420; 1913 c 99 § 41; RRS § 3627. (ii) RCW 63.04.340; 1925 ex.s. c 142 § 33; RRS § 5836-33. (iii) RCW 81.32.321; 1961 c 14 § 81.32.321; prior: 1915 c 159 § 32; RRS § 3678; formerly RCW 81.32.410.]

62A.7-504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under RCW 62A.7-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under RCW 62A.2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. [1965 ex.s. c 157 § 7-504. Cf. former RCW sections: (i) RCW 22.04.420(2) and 22.04.430; 1913 c 99 §§ 41, and 42; RRS §§ 3627, and 3628. (ii) RCW 63.04.350; 1925 ex.s. c 142 § 34; RRS § 5834-34. (iii) RCW 81.32.321(2) and 81.32.331; 1961 c 14 §§ 81.32.321 and 81.32.331; prior: 1915 c 159 §§ 32 and 33; RRS §§ 3678 and 3679; formerly RCW 81.32.410 and 81.32.420.]

62A.7-505 Indorser not a guarantor for other parties. The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. [1965 ex.s. c 157 § 7-505. Cf. former RCW sections: (i) RCW 22.04.460; 1913 c 99 § 45; RRS § 3631. (ii) RCW 63.04.380; 1925 ex.s. c 142 § 37; RRS § 5836-37. (iii) RCW 81.32.361; 1961 c 14 § 81.32.361; prior: 1915 c 159 § 36; RRS § 3682; formerly RCW 81.32.450.]

62A.7-506 Delivery without indorsement: Right to compel indorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the

transfer becomes a negotiation only as of the time the indorsement is supplied. [1965 ex.s. c 157 § 7-506. Cf. former RCW sections: (i) RCW 22.04.440; 1913 c 99 § 43; RRS § 3629. (ii) RCW 63.04.360; 1925 ex.s. c 142 § 35; RRS § 5836-35. (iii) RCW 81.32.341; 1961 c 14 § 81.32.341; prior: 1915 c 159 § 34; RRS § 3680; formerly RCW 81.32.430.]

62A.7-507 Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents. [1965 ex.s. c 157 § 7-507. Cf. former RCW sections: (i) RCW 22.04.450; 1913 c 99 § 44; RRS § 3630. (ii) RCW 63.04.370; 1925 ex.s. c 142 § 36; RRS § 5836-36. (iii) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440.]

62A.7-508 Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. [1965 ex.s. c 157 § 7-508. Cf. former RCW sections: (i) RCW 22.04.470; 1913 c 99 § 46; RRS § 3632. (ii) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

62A.7-509 Receipt or bill: When adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5). [1965 ex.s. c 157 § 7-509.]

**PART 6
WAREHOUSE RECEIPTS AND BILLS OF
LADING: MISCELLANEOUS PROVISIONS**

62A.7-601 Lost and missing documents. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its

discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. [1965 ex.s. c 157 § 7-601. Cf. former RCW sections: (i) RCW 22.04.150; 1913 c 99 § 14; RRS § 3600. (ii) RCW 81.32.171; 1961 c 14 § 81.32.171; prior: 1915 c 159 § 17; RRS § 3663; formerly RCW 81.32.180.]

62A.7-602 Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. [1965 ex.s. c 157 § 7-602. Cf. former RCW sections: (i) RCW 22.04.260; 1913 c 99 § 25; RRS § 3611. (ii) RCW 81.32.241; 1961 c 14 § 81.32.241; prior: 1915 c 159 § 24; RRS § 3670; formerly RCW 81.32.250.]

62A.7-603 Conflicting claims; interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate. [1965 ex.s. c 157 § 7-603. Cf. former RCW sections: (i) RCW 22.04.170 and 22.04.180; 1913 c 99 §§ 16 and 17; RRS §§ 3602 and 3603. (ii) RCW 81.32.201 and 81.32.211; 1961 c 14 §§ 81.32.201 and 81.32.211; prior: 1915 c 159 §§ 20 and 21; RRS §§ 3666 and 3667; formerly RCW 81.32.210 and 81.32.220.]

Article 8

INVESTMENT SECURITIES

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ARTICLE 8 INVESTMENT SECURITIES

PART 1 SHORT TITLE AND GENERAL MATTERS

62A.8-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Investment Securities. [1965 ex.s. c 157 § 8-101.]

62A.8-102 Definitions and index of definitions. (1) In this Article unless the context otherwise requires

(a) A "security" is an instrument which
(i) is issued in bearer or registered form; and
(ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this Article and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that Article. This Article does not apply to money.

(c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation"

(a) At least ninety percent of the capital stock of which is held by or for one or more persons (other than individuals), each of whom

(i) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws, or

(ii) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940, or

(iii) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934; and none of whom, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of such corporation; and

(b) Any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

(4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this Article or to specified Parts thereof and the sections in which they appear are:

"Adverse claim". RCW 62A.8-301.

"Bona fide purchaser". RCW 62A.8-302.

"Broker". RCW 62A.8-303.

"Guarantee of the signature". RCW 62A.8-402.

"Intermediary bank". RCW 62A.4-105.

"Issuer". RCW 62A.8-201.

"Overissue". RCW 62A.8-104.

(6) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1973 c 98 § 1; 1965 ex.s. c 157 § 8-102. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

62A.8-103 Issuer's lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security. [1965 ex.s. c 157 § 8-103. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.140.]

62A.8-104 Effect of overissue; "overissue". (1) The provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but

(a) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue. [1965 ex.s. c 157 § 8-104.]

Corporations—Purchase of own shares: RCW 23A.08.030.

62A.8-105 Securities negotiable; presumptions. (1) Securities governed by this Article are negotiable instruments.

(2) In any action on a security

(a) unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(b) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (RCW 62A.8-202). [1965 ex.s. c 157 § 8-105. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

62A.8-106 Applicability. The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer. [1965 ex.s. c 157 § 8-106.]

Territorial application of Uniform Act for Simplification of Fiduciary Security Transfers: RCW 21.17.080.

62A.8-107 Securities deliverable; action for price. (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of

the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

(2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price

(a) of securities accepted by the buyer; and

(b) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale. [1965 ex.s. c 157 § 8-107.]

PART 2 ISSUE—ISSUER

62A.8-201 "Issuer". (1) With respect to obligations on or defenses to a security "issuer" includes a person who

(a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(c) becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(3) With respect to registration of transfer (Part 4 of this Article) "issuer" means a person on whose behalf transfer books are maintained. [1965 ex.s. c 157 § 8-201. Cf. former RCW sections: RCW 62.01.029, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.029, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 29, and 60 through 62; RRS §§ 3420, and 3451 through 3453.]

*Corporations, effect of merger or consolidation: RCW 23A.20.060.
Securities Act, issuer: RCW 21.20.005(7).*

62A.8-202 Issuer's responsibility and defenses; notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in

the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (RCW 62A.8-205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including non-delivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed. [1965 ex.s. c 157 § 8-202. Cf. former RCW sections: RCW 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 16, 23, 28, 56, 57, and 60 through 62; RRS §§ 3407, 3414, 3419, 3447, 3448, and 3451 through 3453.]

62A.8-203 Staleness as notice of defects or defenses.

(1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not covered by paragraph (a) and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1). [1965 ex.s. c 157 § 8-203. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

62A.8-204 Effect of issuer's restrictions on transfer.

Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it. [1965 ex.s. c 157 § 8-204. Cf. former

RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.160.]

Corporations—Stock certificates—Limitations: RCW 23A.08.190.

62A.8-205 Effect of unauthorized signature on issue.

An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(b) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security. [1965 ex.s. c 157 § 8-205. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

62A.8-206 Completion or alteration of instrument.

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms. [1965 ex.s. c 157 § 8-206. Cf. former RCW sections: (i) RCW 23.80.160; 1939 c 100 § 16; RRS § 3803-116; formerly RCW 23.20.170. (ii) RCW 62.01.014, 62.01.015, and 62.01.124; 1955 c 35 §§ 62.01.014, 62.01.015, and 62.01.124; prior: 1899 c 149 §§ 14, 15, and 124; RRS §§ 3405, 3406, and 3514.]

62A.8-207 Rights of issuer with respect to registered owners.

(1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this Article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like. [1965 ex.s. c 157 § 8-207. Cf. former RCW 23.80.020 and 23.80.030; 1939 c 100 §§ 2 and 3; RRS §§ 3803-102, and 3803-103; formerly RCW 23.20.030 and 23.20.040.]

Corporations—Stock transfers: RCW 23A.08.210.

62A.8-208 Effect of signature of authenticating trustee, registrar or transfer agent. (1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

(a) the security is genuine; and

(b) his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects. [1965 ex.s. c 157 § 8-208.]

**PART 3
PURCHASE**

62A.8-301 Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser.

(1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased. [1965 ex.s. c 157 § 8-301. Cf. former RCW sections: (i) RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443. (iii) RCW 62.01.057 through 62.01.059; 1955 c 35 §§ 62.01.057 through 62.01.059; prior: 1899 c 149 §§ 57 through 59; RRS §§ 3448 through 3450.]

62A.8-302 "Bona fide purchaser". A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank. [1965 ex.s. c 157 § 8-302. Cf. former RCW sections: (i) RCW 23.80.230(2); 1939 c 100 § 23; RRS § 3803-123. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

62A.8-303 "Broker". "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this Article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject. [1965 ex.s. c 157 § 8-303.]

62A.8-304 Notice to purchaser of adverse claims. (1) A purchaser (including a broker for the seller or buyer

but excluding an intermediary bank) of a security is charged with notice of adverse claims if

(a) the security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims. [1965 ex.s. c 157 § 8-304. Cf. former RCW sections: RCW 62.01.037 and 62.01.056; 1955 c 35 §§ 62.01.037 and 62.01.056; prior: 1899 c 149 §§ 37 and 56; RRS §§ 3428 and 3447.]

Security transfers—Nonliability of third persons: RCW 21.17.070(1).

62A.8-305 Staleness as notice of adverse claims. An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase

(a) after one year from any date set for such presentment or surrender for redemption or exchange; or

(b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date. [1965 ex.s. c 157 § 8-305. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

62A.8-306 Warranties on presentment and transfer.

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or re-registered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (RCW 62A.8-311) in a necessary indorsement.

(2) A person by transferring a security to a purchaser for value warrants only that

(a) his transfer is effective and rightful; and
(b) the security is genuine and has not been materially altered; and

(c) he knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other

claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer. [1965 ex.s. c 157 § 8-306. Cf. former RCW sections: (i) RCW 23.80.110 and 23.80.120; 1939 c 100 §§ 11 and 12; RRS §§ 3803-111 and 3803-112; formerly RCW 23.20.120 and 23.20.130. (ii) RCW 62.01.065 through 62.01.067, and 62.01.069; 1955 c 35 §§ 62.01.065 through 62.01.067, and 62.01.069; prior: 1899 c 149 §§ 65 through 67, and 69; RRS §§ 3456 through 3458, and 3460.]

62A.8-307 Effect of delivery without indorsement; right to compel indorsement. Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied. [1965 ex.s. c 157 § 8-307. Cf. former RCW sections: (i) RCW 23.80.090; 1939 c 100 § 9; RRS § 3803-109; formerly RCW 23.20.100. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440.]

62A.8-308 Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment. (1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) "An appropriate person" in subsection (1) means
(a) the person specified by the security or by special indorsement to be entitled to the security; or

(b) where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

(c) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) a person having power to sign under applicable law or controlling instrument; or

(g) to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this Article. [1965 ex.s. c 157 § 8-308. Cf. former RCW sections: (i) RCW 23.80.200; 1939 c 100 § 20; RRS § 3803-120; formerly RCW 23.20.200. (ii) RCW 62.01.031 through 62.01.037; 1955 c 35 §§ 62.01.031 through 62.01.037; prior: 1899 c 149 §§ 31 through 37; RRS §§ 3422 through 3428. (iii) RCW 62.01.064 through 62.01.069; 1955 c 35 §§ 62.01.064 through 62.01.069; prior: 1899 c 149 §§ 64 through 69; RRS §§ 3455 through 3460.]

62A.8-309 Effect of indorsement without delivery.

An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security. [1965 ex.s. c 157 § 8-309. Cf. former RCW sections: (i) RCW 23.80.010; 1939 c 100 § 1; RRS § 3803-101; prior: 1927 c 206 § 1; Code 1881 § 2429; 1873 p 401 § 9; 1869 p 333 § 9; 1866 p 59 § 9; formerly RCW 23.20:020. (ii) RCW 23.80.100; 1939 c 100 § 10; RRS § 3803-110; formerly RCW 23.20.110. (iii) RCW 62.01.030; 1955 c 35 § 62.01.030; prior: 1899 c 149 § 30; RRS § 3421.]

62A.8-310 Indorsement of security in bearer form.

An indorsement of a security in bearer form may give notice of adverse claims (RCW 62A.8-304) but does not otherwise affect any right to registration the holder may possess. [1965 ex.s. c 157 § 8-310. Cf. former RCW 62.01.040; 1955 c 35 § 62.01.040; prior: 1899 c 149 § 40; RRS § 3431.]

62A.8-311 Effect of unauthorized indorsement. Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer; and

(b) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (RCW 62A.8-404). [1965 ex.s. c 157 § 8-311. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

62A.8-312 Effect of guaranteeing signature or indorsement. (1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(a) the signature was genuine; and

(b) the signer was an appropriate person to indorse (RCW 62A.8-308); and

(c) the signer had legal capacity to sign. But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties. [1965 ex.s. c 157 § 8-312.]

62A.8-313 When delivery to the purchaser occurs; purchaser's broker as holder. (1) Delivery to a purchaser occurs when

(a) he or a person designated by him acquires possession of a security; or

(b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries on the books of a clearing corporation are made under RCW 62A.8-320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received. [1965 ex.s. c 157 § 8-313. Cf. former RCW sections: (i) RCW 23.80.220; 1939 c 100 § 22; RRS § 3803-122; formerly RCW 23.20.010, part. (ii) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

62A.8-314 Duty to deliver, when completed. (1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection (1). [1965 ex.s. c 157 § 8-314.]

62A.8-315 Action against purchaser based upon wrongful transfer. (1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this Article on unauthorized indorsements (RCW 62A.8-311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation. [1965 ex.s. c 157 § 8-315. Cf. former RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080.]

62A.8-316 Purchaser's right to requisites for registration of transfer on books. Unless otherwise agreed the

transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer. [1965 ex.s. c 157 § 8-316.]

62A.8-317 Attachment or levy upon security. (1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. [1965 ex.s. c 157 § 8-317. Cf. former RCW sections: RCW 23.80.130 and 23.80.140; 1939 c 100 §§ 13 and 14; RRS §§ 3803-113 and 3803-114; formerly RCW 23.20.140 and 23.20.150.]

62A.8-318 No conversion by good faith delivery. An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them. [1965 ex.s. c 157 § 8-318.]

Security transfers—Nonliability of third persons: RCW 21.17.070(1).

62A.8-319 Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price. [1965 ex.s.

c 157 § 8-319. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4.]

62A.8-320 Transfer or pledge within a central depository system. (1) If a security

(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (RCW 62A.8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (RCW 62A.9-304 and RCW 62A.9-305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this Article.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby. [1965 ex.s. c 157 § 8-320.]

PART 4 REGISTRATION

62A.8-401 Duty of issuer to register transfer. (1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if

(a) the security is indorsed by the appropriate person or persons (RCW 62A.8-308); and

(b) reasonable assurance is given that those indorsements are genuine and effective (RCW 62A.8-402); and

(c) the issuer has no duty to inquire into adverse claims or has discharged any such duty (RCW 62A.8-403); and

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer is in fact rightful or is to a bona fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer. [1965 ex.s. c 157 § 8-401.]

Inheritance tax on corporate stock: RCW 83.44.030.

62A.8-402 Assurance that indorsements are effective.

(1) The issuer may require the following assurance that each necessary indorsement (RCW 62A.8-308) is genuine and effective

(a) in all cases, a guarantee of the signature (subsection (1) of RCW 62A.8-312) of the person indorsing; and

(b) where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection (3)(b) both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, bylaws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer. [1965 ex.s. c 157 § 8-402.]

Fiduciary security transfers—Evidence of appointment or incumbency: RCW 21.17.040.

62A.8-403 Limited duty of inquiry. (1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

(a) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of RCW 62A.8-402.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of RCW 62A.8-402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the

indorsement of a fiduciary to the fiduciary himself or to his nominee. [1965 ex.s. c 157 § 8-403.]

Fiduciary security transfers: Chapter 21.17 RCW.

62A.8-404 Liability and non-liability for registration. (1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if

(a) there were on or with the security the necessary indorsements (RCW 62A.8-308); and

(b) the issuer had no duty to inquire into adverse claims or has discharged any such duty (RCW 62A.8-403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless

(a) the registration was pursuant to subsection (1); or

(b) the owner is precluded from asserting any claim for registering the transfer under subsection (1) of the following section; or

(c) such delivery would result in overissue, in which case the issuer's liability is governed by RCW 62A.8-104. [1965 ex.s. c 157 § 8-404.]

62A.8-405 Lost, destroyed and stolen securities. (1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by RCW 62A.8-104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser. [1965 ex.s. c 157 § 8-405. Cf. former RCW 23.80.170; 1939 c 100 § 17; RRS § 3803-117; formerly RCW 23.20.180.]

62A.8-406 Duty of authenticating trustee, transfer agent or registrar. (1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent. [1965 ex.s. c 157 § 8-406.]

Article 9

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

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PART 5 DEFAULT

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ARTICLE 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

PART 1 SHORT TITLE, APPLICABILITY AND DEFINITIONS

62A.9-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Secured Transactions. [1965 ex.s. c 157 § 9-101.]

62A.9-102 Policy and scope of Article. (1) Except as otherwise provided in RCW 62A.9-103 on multiple state

transactions and in RCW 62A.9-104 on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this state

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in RCW 62A.9-310.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply. [1965 ex.s. c 157 § 9-102. Cf. former RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

62A.9-103 Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest. (1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this Article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this Article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state. For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by

the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within thirty days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

(5) Notwithstanding subsection (1) and RCW 62A.9-302, if the office where the assignor of accounts or contract rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of this state or the transaction which creates the security interest otherwise bears an appropriate relation to this state, this Article governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor. [1965 ex.s. c 157 § 9-103.]

62A.9-104 Transactions excluded from Article. This Article does not apply

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in RCW 62A.9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to an equipment trust covering railway rolling stock or to a security interest on railroad equipment or rolling stock perfected under the provisions of RCW 81.36.140, 81.36.150 and 81.36.160; or

(f) to a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or

(g) to a transfer of an interest or claim in or under any policy of insurance; or

(h) to a right represented by a judgment; or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in RCW 62A.9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization. [1965 ex.s. c 157 § 9-104. Cf. former RCW sections: (i) RCW 61.20.010 and 61.20.140; 1943 c 71 §§ 1 and 14; Rem. Supp. 1943 §§ 11548-30 and 11548-43. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 63.16.010 and 63.16.110(2); 1947 c 8 §§ 1 and 11; Rem. Supp. 1947 §§ 2721-1 and 2721-11.]

62A.9-105 Definitions and index of definitions. (1) In this Article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in the general definitions of Article 1 (RCW 62A.1-201);

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (RCW 62A.9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in RCW 62A.3-104), or a security (defined in

RCW 62A.8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account". RCW 62A.9-106.

"Consumer goods". RCW 62A.9-109(1).

"Contract right". RCW 62A.9-106.

"Equipment". RCW 62A.9-109(2).

"Farm products". RCW 62A.9-109(3).

"General intangibles". RCW 62A.9-106.

"Inventory". RCW 62A.9-109(4).

"Lien creditor". RCW 62A.9-301(3).

"Proceeds". RCW 62A.9-306(1).

"Purchase money security interest". RCW 62A.9-107.

(3) The following definitions in other Articles apply to this Article:

"Check". RCW 62A.3-104.

"Contract for sale". RCW 62A.2-106.

"Holder in due course". RCW 62A.3-302.

"Note". RCW 62A.3-104.

"Sale". RCW 62A.2-106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 9-105. Cf. former RCW sections: (i) RCW 61.20.010; 1943 c 71 § 1; Rem. Supp. 1943 § 11548-30. (ii) RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

62A.9-106 Definitions: "Account"; "contract right"; "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments. [1965 ex.s. c 157 § 9-106. Cf. former RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

62A.9-107 Definitions: "Purchase money security interest". A security interest is a "purchase money security interest" to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to

acquire rights in or the use of collateral if such value is in fact so used. [1965 ex.s. c 157 § 9-107.]

62A.9-108 When after-acquired collateral not security for antecedent debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given. [1965 ex.s. c 157 § 9-108.]

62A.9-109 Classification of goods; "consumer goods"; "equipment"; "farm products"; "inventory". Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. [1965 ex.s. c 157 § 9-109.]

62A.9-110 Sufficiency of description. For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described. [1965 ex.s. c 157 § 9-110. Cf. former RCW sections: (i) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (ii) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790.]

62A.9-111 Applicability of bulk transfer laws. The creation of a security interest is not a bulk transfer under Article 6 (RCW 62A.6-103). [1965 ex.s. c 157 § 9-111.]

62A.9-112 Where collateral is not owned by debtor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under RCW 62A.9-

502(2) or under RCW 62A.9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

(a) to receive statements under RCW 62A.9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under RCW 62A.9-505;

(c) to redeem the collateral under RCW 62A.9-506;

(d) to obtain injunctive or other relief under RCW 62A.9-507(1); and

(e) to recover losses caused to him under RCW 62A.9-208(2). [1965 ex.s. c 157 § 9-112.]

62A.9-113 Security interests arising under Article on sales. A security interest arising solely under the Article on Sales (Article 2) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed by the Article on Sales (Article 2). [1965 ex.s. c 157 § 9-113.]

PART 2

VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

62A.9-201 General validity of security agreement. Except as otherwise provided by this Title a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto. [1965 ex.s. c 157 § 9-201. Cf. former RCW sections: (i) RCW 61.20.030 and 61.20.050; 1943 c 71 §§ 3 and 5; Rem. Supp. 1943 §§ 11548-32 and 11548-34. (ii) RCW 63.16.110(1); 1947 c 8 § 11; Rem. Supp. 1947 § 2721-11.]

Consumer finance businesses—Prohibited acts: RCW 31.08.150.

Credit unions—Limits and conditions: RCW 31.12.280.

Crop credit associations—Loans and security: RCW 31.16.130.

Industrial loan companies—Prohibited acts: RCW 31.04.100.

Interest—Usury: Chapter 19.52 RCW.

62A.9-202 Title to collateral immaterial. Each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. [1965 ex.s. c 157 § 9-202. Cf. former RCW 61.20.010; 1943 c 71 § 1; Rem. Supp. 1943 § 11548-30.]

62A.9-203 Enforceability of security interest; proceeds, formal requisites. (1) Subject to the provisions of RCW 62A.4-208 on the security interest of a collecting bank and RCW 62A.9-113 on a security interest arising

under the Article on Sales, a security interest is not enforceable against the debtor or third parties unless

(a) the collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

(2) A transaction, although subject to this Article, is also subject to chapters 31.04, 31.08, 31.12, 31.16, 31.20, and 31.24 RCW, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. [1965 ex.s. c 157 § 9-203. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 61.20.040; 1943 c 71 § 4; Rem. Supp. 1943 § 11548-33. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.020 and 63.16.030; 1947 c 8 §§ 2 and 3; Rem. Supp. 1947 §§ 2721-2 and 2721-3.]

62A.9-204 When security interest attaches; after-acquired property; future advances. (1) A security interest cannot attach until there is agreement (subsection (3) of RCW 62A.1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause

(a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) to consumer goods other than accessions (RCW 62A.9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

(6) A security interest cannot attach to livestock or to meat or meat products made from such livestock, where (a) the livestock was sold to the debtor by another party, (b) this other party has been paid by draft or check, and (c) the draft or check remains outstanding: *Provided*, That a security interest may attach when the draft or check has been outstanding more than ten days. [1974 ex.s. c 102 § 1; 1965 ex.s. c 157 § 9-204. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 61.20.040 and 61.20.140; 1943 c 71 §§ 4 and 14; Rem. Supp. 1943 §§ 11548-33 and 11548-43.]

62A.9-205 Use or disposition of collateral without accounting permissible. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee. [1965 ex.s. c 157 § 9-205. Cf. former RCW sections: (i) RCW 63.12.030; 1937 c 196 § 2; 1925 ex.s. c 120 § 1; RRS § 3791-1. (ii) RCW 63.16.080; 1947 c 8 § 8; Rem. Supp. 1947 § 2721-8.]

62A.9-206 Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists. (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3).

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties. [1965 ex.s. c 157 § 9-206.]

62A.9-207 Rights and duties when collateral is in secured party's possession. (1) A secured party must use

reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral (a) for the purpose of preserving the collateral or its value or (b) pursuant to the order of a court of appropriate jurisdiction or, (c) except in the case of consumer goods, in the manner and to the extent provided in the security agreement. [1965 ex.s. c 157 § 9-207.]

62A.9-208 Request for statement of account or list of collateral. (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor, or any other person whom he designates in writing to the secured party. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor or such other person as the debtor has designated as the recipient of such information thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an

interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor or designated recipient of the information as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding ten dollars for each additional statement furnished. [1965 ex.s. c 157 § 9-208. Cf. former RCW 63.16.100; 1947 c 8 § 10; Rem. Supp. 1947 § 2721-10.]

PART 3

RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

Mortgaged, pledged or assigned rents and profits of realty excluded from Article 62A.9 RCW: RCW 7.28.230.

62A.9-301 Persons who take priority over unperfected security interests; "lien creditor". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under RCW 62A.9-312;

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest. [1965 ex.s. c 157 § 9-301. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1;

Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (iii) RCW 61.20.010 and 61.20.090(2); 1943 c 71 §§ 1 and 9; Rem. Supp. 1943 §§ 11548-30 and 11548-38. (iv) RCW 61.20.080(1), (2), (3); 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (v) RCW 63.12-.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (vi) RCW 63.16.020 and 63.16.030; 1947 c 8 §§ 2 and 3; Rem. Supp. 1947 §§ 2721-2 and 2721-3.]

62A.9-302 When filing is required to perfect security interest; security interests to which filing provisions of this Article do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under RCW 62A.9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under RCW 62A.9-304 or in proceeds for a ten day period under RCW 62A.9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of two thousand five hundred dollars; but filing is required for a fixture under RCW 62A.9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under RCW 62A.9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (RCW 62A.4-208) or arising under the Article on Sales (RCW 62A.9-113) or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

(5) Part 4 of this Article does not apply to a security interest in property of any description created by a deed of trust or mortgage made by any corporation primarily engaged in the railroad or street railway business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipe line, or

the production, transmission or distribution of electricity, steam, gas or water, but such security interest may be perfected under this Article by filing such deed of trust or mortgage with the department of licensing. When so filed, such instrument shall remain effective until terminated, without the need for filing a continuation statement. Assignments and releases of such instruments may also be filed with the department of licensing. The director of licensing shall be a filing officer for the foregoing purposes, and the uniform fee for filing, indexing, and furnishing filing data pursuant to this subsection shall be five dollars. [1979 c 158 § 210; 1977 ex.s. c 117 § 6; 1967 c 114 § 4; 1965 ex.s. c 157 § 9-302. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.030 and 61.20.090; 1943 c 71 §§ 3 and 9; Rem. Supp. 1943 §§ 11548-32 and 11548-38. (iii) RCW 61.20.080; 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.030; 1947 c 8 § 3; Rem. Supp. 1947 § 2721-3.]

Reviser's note: The section caption is the same as that originally enacted in 1965 ex.s. c 157 § 9-302. It was not included in the 1967 amendment to this section.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Motor vehicles—Certificate of ownership and registration: RCW 46.12.010.

Seed bailment contracts: Filing, recording or notice of contract not required to establish validity of contract or title in bailor: RCW 15-48.270-15.48.290.

Transitory provisions regarding transfer of UCC powers, duties and functions of the secretary of state to department of licensing: See notes following RCW 43.07.150.

62A.9-303 When security interest is perfected; continuity of perfection. (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in RCW 62A.9-302, RCW 62A.9-304, RCW 62A.9-305 and RCW 62A.9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article. [1965 ex.s. c 157 § 9-303.]

62A.9-304 Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can

be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article. [1965 ex.s. c 157 § 9-304. Cf. former RCW sections: (i) RCW 61.20.030 and 61.20.090; 1943 c 71 §§ 3 and 9; Rem. Supp. 1943 §§ 11548-32 and 11548-38. (ii) RCW 61.20.080; 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (iii) RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

62A.9-305 When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subsection (2)(a) of RCW 62A.5-116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party. [1965 ex.s. c 157 § 9-305.]

62A.9-306 "Proceeds"; secured party's rights on disposition of collateral. (1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covering the original collateral also covers proceeds; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest

(a) in identifiable non-cash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under RCW 62A.9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods. [1965 ex.s. c 157 § 9-306. Cf. former RCW sections: (i) RCW 61.20.090 and 61.20.100; 1943 c 71 §§ 9 and 10; Rem. Supp. 1943 §§ 11548-38 and 11548-39. (ii) RCW 63.12.030; 1937 c 196 § 2; 1925 ex.s. c 120 § 1; RRS § 3791-1. (iii) RCW 63.16.080; 1947 c 8 § 8; Rem. Supp. 1947 § 2721-8.]

62A.9-307 Protection of buyers of goods. (1) A buyer in ordinary course of business (subsection (9) of RCW 62A.1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of two thousand five hundred dollars (other than fixtures, see RCW 62A.9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods. [1965 ex.s. c 157 § 9-307. Cf. former RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38.]

62A.9-308 Purchase of chattel paper and non-negotiable instruments. A purchaser of chattel paper or a non-negotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under RCW 62A.9-304 (permissive filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (RCW 62A.9-306), even though he knows that the specific paper is subject to the security interest. [1965 ex.s. c 157 § 9-308. Cf. former RCW sections: RCW 61.20.090 and 61.20.100; 1943 c 71 §§ 9 and 10; Rem. Supp. 1943 §§ 11548-38 and 11548-39.]

62A.9-309 Protection of purchasers of instruments and documents. Nothing in this Article limits the rights of a holder in due course of a negotiable instrument

(RCW 62A.3-302) or a holder to whom a negotiable document of title has been duly negotiated (RCW 62A.7-501) or a bona fide purchaser of a security (RCW 62A.8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers. [1965 ex.s. c 157 § 9-309. Cf. former RCW 61.20.090(1); 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38.]

62A.9-310 Priority of certain liens arising by operation of law. When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest only if the lien is statutory and the statute expressly provides for such priority. [1965 ex.s. c 157 § 9-310. Cf. former RCW 61.20.110; 1943 c 71 § 11; Rem. Supp. 1943 § 11548-40.]

62A.9-311 Alienability of debtor's rights: Judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default. [1965 ex.s. c 157 § 9-311. Cf. former RCW 61.08.120; Code 1881 § 1990; 1879 p 105 § 5; RRS § 1115.]

62A.9-312 Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in the following sections shall govern where applicable: RCW 62A.4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; RCW 62A.9-301 on certain priorities; RCW 62A.9-304 on goods covered by documents; RCW 62A.9-306 on proceeds and repossessions; RCW 62A.9-307 on buyers of goods; RCW 62A.9-308 on possessory against non-possessory interests in chattel paper or non-negotiable instruments; RCW 62A.9-309 on security interests in negotiable instruments, documents or securities; RCW 62A.9-310 on priorities between perfected security interests and liens by operation of law; RCW 62A.9-313 on security interests in fixtures as against interests in real estate; RCW 62A.9-314 on security interests in accessions as against interest in goods; RCW 62A.9-315 on conflicting security interests where goods lose their identity or become part of a product; and RCW 62A.9-316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or

otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under RCW 62A.9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under RCW 62A.9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under RCW 62A.9-204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing. [1965 ex.s. c 157 § 9-312. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.010 and 61.20.090; 1943 c 71 §§ 1 and 9; Rem. Supp. 1943 §§ 11548-30 and 11548-38. (iii) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (iv) RCW 63.16.030 and 63.16.090; 1947 c 8 §§ 3 and 9; Rem. Supp. 1947 §§ 2721-3 and 2721-9.]

62A.9-313 Priority of security interests in fixtures.

(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this Article unless the structure remains personal property under applicable law. The law of this state other than this Title determines whether and when other goods become fixtures. This Title does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4).

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [1965 ex.s. c 157 § 9-313. Cf. former RCW sections: (i) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (ii) RCW 63.12.020; 1933 c 129 § 2; 1903 c 6 § 2; 1893 c 106 § 2; RRS § 3791.]

62A.9-314 Accessions. (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions")

over the claims of all persons to the whole except as stated in subsection (3) and subject to RCW 62A.9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [1965 ex.s. c 157 § 9-314.]

62A.9-315 Priority when goods are commingled or processed. (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under RCW 62A.9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the

cost of the total product or mass. [1965 ex.s. c 157 § 9-315.]

62A.9-316 Priority subject to subordination. Nothing in this Article prevents subordination by agreement by any person entitled to priority. [1965 ex.s. c 157 § 9-316.]

62A.9-317 Secured party not obligated on contract of debtor. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions. [1965 ex.s. c 157 § 9-317. Cf. former RCW 61.20.120; 1943 c 71 § 12; Rem. Supp. 1943 § 11548-41.]

62A.9-318 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in RCW 62A.9-206 the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective. [1965 ex.s. c 157 § 9-318. Cf. former RCW sections: (i) RCW 61.20.090(3); 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

Actions on assigned choses in action: RCW 4.08.080.

Setoffs: RCW 4.32.110.

PART 4
FILING

Filing of security interests created by deed of trust or mortgage made by corporation engaged in railroad or utility business or services: RCW 62A.9-302(5).

Seed bailment contracts, application of Article 62A.9 RCW to: RCW 15.48.270-15.48.290.

Seed bailment contracts, security interest not created by contract: RCW 15.48.280.

62A.9-401 Place of filing; erroneous filing; removal of collateral. (1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the auditor in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the auditor in the county where the goods are kept, and in addition when the collateral is crops in the office of the auditor in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, with the department of licensing.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into this state from another jurisdiction, the rules stated in RCW 62A.9-103 determine whether filing is necessary in this state. [1979 c 158 § 211; 1977 ex.s. c 117 § 7; 1965 ex.s. c 157 § 9-401. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.030; 1943 c 71 § 3; Rem. Supp. 1943 § 11548-32. (iii) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.010(6); 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Transitory provisions regarding transfer of UCC powers, duties and functions of secretary of state to department of licensing: See notes following RCW 43.07.150.

62A.9-402 Formal requisites of financing statement; amendments. (1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.

(b) proceeds under RCW 62A.9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor -----
Mailing address of debtor -----
Name of secured party -----
Mailing address of secured party -----
1. This financing statement covers the following types (or items) of property:
(Description of collateral) -----
2. (If collateral is crops) The above described crops are growing or are to be grown on or are standing on:
(Description of real property) -----
3. (If proceeds or products of collateral are claimed) Proceeds—Products of the collateral are also covered -----
Signature of debtor -----
Signature of secured party -----
(If the transaction consists of the sale of accounts, contract rights or chattel paper, the term "seller" or "assignor" may be substituted for "debtor" and the term "buyer" or "assignee" may be substituted for "secured party") -----

(4) The term "financing statement" as used in this Article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. [1965 ex.s. c 157 § 9-402. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p

426 § 1. (ii) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (iii) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.030; 1947 c 8 § 3; Rem. Supp. 1947 § 2721-3.]

62A.9-403 What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty day period after a stated maturity date or on the expiration of such five year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing, indexing, and furnishing filing data for an original or a continuation statement on a form conforming to standards prescribed by the department of licensing shall be three dollars, but if the form of the statement does not conform to the standards prescribed by the department the uniform fee shall be five dollars. [1979 c 158 § 212; 1977 ex.s. c 117 § 8; 1967 c 114 § 5; 1965 ex.s. c 157 § 9-403. Cf. former RCW sections: (i) RCW 61.04.030; 1959 c 263 §

11; 1953 c 214 § 3; 1943 c 284 § 2; 1899 c 98 § 2; Rem. Supp. 1943 § 3781. (ii) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (iii) RCW 61.04.050; 1899 c 98 § 4; RRS § 3783. (iv) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (v) RCW 63.12.020; 1933 c 129 § 2; 1903 c 6 § 2; 1893 c 106 § 2; RRS § 3791. (vi) RCW 63.16.040 through 63.16.060; 1947 c 8 §§ 4 through 6; Rem. Supp. 1947 §§ 2721-4 through 2721-6.]

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Transitory provisions regarding transfer of UCC powers, duties and functions of secretary of state to department of licensing: See notes following RCW 43.07.150.

62A.9-404 Termination statement. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof on a form conforming to standards prescribed by the department of licensing shall be one dollar, but if the form of the statement does not conform to the standards prescribed by the department the uniform fee shall be two dollars. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

(3) There shall be no fee for filing and indexing a termination statement including sending or delivering the financing statement. [1979 c 158 § 213; 1977 ex.s. c 117 § 9; 1967 c 114 § 6; 1965 ex.s. c 157 § 9-404. Cf. former RCW sections: (i) RCW 61.16.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787. (ii) RCW 61.16.050; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 9); RRS § 3787-1. (iii) RCW 61.16.070; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 11); RRS § 3787-3. (iv) RCW 63.16.070; 1947 c 8 § 7; Rem. Supp. 1947 § 2721-7.]

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Transitory provisions regarding transfer of UCC powers, duties and functions of secretary of state to department of licensing: See notes following RCW 43.07.150.

62A.9-405 Assignment of security interest; duties of filing officer; fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement, the filing officer shall mark, hold, and index the same as provided in RCW 62A.9-403(4), and shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment on a form conforming to standards prescribed by the department of licensing shall be three dollars, but if the form of the financing statement does not conform to the standards prescribed by the department the uniform fee shall be five dollars.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment on a form conforming to standards prescribed by the department shall be one dollar, but if the form of the financing statement does not conform to the standards prescribed by the department the uniform fee shall be two dollars.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. [1979 c 158 § 214; 1977 ex.s. c 117 § 10; 1967 c 114 § 7; 1965 ex.s. c 157 § 9-405. Cf. former RCW sections: (i) RCW 61.16.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787. (ii) RCW 61.16.050; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 9); RRS § 3787-1.]

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Transitory provisions regarding transfer of UCC powers, duties and functions of secretary of state to department of licensing: See notes following RCW 43.07.150.

62A.9-406 Release of collateral; duties of filing officer; fees. A secured party of record may by his signed statement release all or a part of any collateral described

in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release on a form conforming to standards prescribed by the department of licensing shall be one dollar, but if the form of the statement does not conform to the standards prescribed by the department the uniform fee shall be two dollars. [1979 c 158 § 215; 1977 ex.s. c 117 § 11; 1967 c 114 § 9; 1965 ex.s. c 157 § 9-406. Cf. former RCW sections: (i) RCW 61.16.040; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.16.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787.]

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Transitory provisions regarding transfer of UCC powers, duties and functions of secretary of state to department of licensing: See notes following RCW 43.07.150.

62A.9-407 Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be two dollars. Upon request the filing officer shall furnish a copy of any filed financing statements or statements of assignment for a uniform fee of four dollars for each particular debtor's statements requested. [1967 c 114 § 10; 1965 ex.s. c 157 § 9-407.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Duty of secretary of state to furnish copies of filed, deposited or recorded instruments: RCW 43.07.030.

Effect of recording: RCW 65.04.110.

62A.9-408 Presigning of security agreements and financing statements; prefilling of financing statements. (1) Although signed prior to midnight June 30, 1967, a security agreement and a financing statement has the same effect as if signed after said time.

(2) The provisions of this Title and of all other laws relating to financing statements and the filing of financing statements apply to financing statements filed prior

to midnight June 30, 1967, notwithstanding that this Title had not yet taken effect. Notwithstanding the date and hour of filing marked on the statement, each financing statement so prefiled is deemed to have been filed on the date and hour when this Title became effective. [1967 c 114 § 11.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.9-409 Standard filing forms and uniform procedures; acceptance for filing of financial statements on and after June 12, 1967; laws governing; fees. In relation to Article 62A.9 RCW:

(1) The department of licensing may by rule prescribe standard filing forms and uniform procedures for filing with, and obtaining information from, filing officers.

(2) Unless a filing officer has filed with the secretary of state on or before June 1, 1967, his certificate that financing statements, as defined in RCW 62A.9-402, will not be accepted by him for filing on and after June 12, 1967, such filing officer shall accept such financing statements for filing on and after June 12, 1967. Financing statements so filed shall be received, marked, indexed, and filed as provided in Title 62A RCW. The filing fees for filing such statements shall be as provided in Title 62A RCW. [1979 c 158 § 216; 1977 ex.s. c 117 § 12; 1967 c 114 § 12.]

Reviser's note: The section caption for this section was added by the code reviser.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Transitory provisions regarding transfer of UCC powers, duties and functions of secretary of state to department of licensing: See notes following RCW 43.07.150.

PART 5 DEFAULT

62A.9-501 Default; procedure when security agreement covers both real and personal property. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in RCW 62A.9-207. The rights and remedies referred to in this subsection are cumulative.

Notwithstanding any other provision of this Code, in the case of a purchase money security interest in consumer goods taken or retained by the seller of such collateral to secure all or part of its price, the debtor shall not be liable for any deficiency after the secured party has disposed of such collateral under RCW 62A.9-504 or has retained such collateral in satisfaction of the debt under subsection (2) of RCW 62A.9-505.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in RCW 62A.9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of RCW 62A.9-505) and with respect to redemption of collateral (RCW 62A.9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of RCW 62A.9-502 and subsection (2) of RCW 62A.9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of RCW 62A.9-504 and subsection (1) of RCW 62A.9-505 which deal with disposition of collateral;

(c) subsection (2) of RCW 62A.9-505 which deals with acceptance of collateral as discharge of obligation;

(d) RCW 62A.9-506 which deals with redemption of collateral; and

(e) subsection (1) of RCW 62A.9-507 which deals with the secured party's liability for failure to comply with this Part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article. [1965 ex.s. c 157 § 9-501. Cf. former RCW sections: (i) RCW 61.08.010-61.08.090, 61.08.120. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (iii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

62A.9-502 Collection rights of secured party. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under RCW 62A.9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the

collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. [1965 ex.s. c 157 § 9-502.]

62A.9-503 Secured party's right to take possession after default. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under RCW 62A.9-504. [1965 ex.s. c 157 § 9-503. Cf. former RCW sections: (i) RCW 61.08.090; Code 1881 § 1989; 1879 p 105 § 4; RRS § 1112. (ii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

62A.9-504 Secured party's right to dispose of collateral after default; effect of disposition. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the

method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article. [1965 ex.s. c 157 § 9-504. Cf. former RCW sections: (i) RCW 61.08.010-61.08.090, 61.08.120. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (iii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Contractual attorneys' fees to be set by court: RCW 4.84.020.

Foreclosure: RCW 61.12.070, 61.12.140.

Sales under execution: Chapter 6.24 RCW.

62A.9-505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation. (1) If the debtor has paid sixty percent of the cash price in the case of a purchase money security interest in consumer goods or sixty percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of collateral must dispose of it under RCW 62A.9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under RCW 62A.9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within thirty days from the receipt of the notification or if any other secured party objects in writing within thirty days after the secured party obtains possession the secured party must dispose of the collateral under RCW 62A.9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation. [1965 ex.s. c 157 § 9-505. Cf. former RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

62A.9-506 Debtor's right to redeem collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under RCW 62A.9-504 or before the obligation has been discharged under RCW 62A.9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses. [1965 ex.s. c 157 § 9-506. Cf. former RCW sections: (i) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (ii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Judgments—Order of sale—Satisfaction—Upset price: RCW 61.12.060.

62A.9-507 Secured party's liability for failure to comply with this part. (1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time price differential plus ten percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party

either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [1965 ex.s. c 157 § 9-507. Cf. former RCW sections: (i) RCW 61.08.070; Code 1881 § 1997; 1879 p 106 § 12; RRS § 1110; prior: 1875 p 47 § 28. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110.]

Judgments—Order of sale—Satisfaction—Upset price: RCW 61.12.060.

Article 10

EFFECTIVE DATE AND REPEALER

Sections

62A.10-101	Effective date.
62A.10-102	Specific repealer; provision for transition.
62A.10-103	General repealer.
62A.10-104	Laws not repealed.

ARTICLE 10

EFFECTIVE DATE AND REPEALER

62A.10-101 Effective date. This Title shall become effective at midnight on June 30, 1967. It applies to transactions entered into and events occurring after that date. [1965 ex.s. c 157 § 10-101.]

62A.10-102 Specific repealer; provision for transition. (1) The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

- (a) (i) RCW 22.04.010 through 22.04.610;
- (ii) RCW 23.80.010 through 23.80.250;
- (iii) RCW 30.16.020, 30.16.030, 30.16.040 and 30.16.050;
- (iv) RCW 30.40.030, 30.40.040 and 30.40.050;
- (v) RCW 30.52.010 through 30.52.160;
- (vi) RCW 61.04.010 through 61.04.090;
- (vii) RCW 61.08.010 through 61.08.120;
- (viii) RCW 61.12.160;
- (ix) RCW 61.16.040, 61.16.050 and 61.16.070;
- (x) RCW 61.20.010 through 61.20.190;
- (xi) RCW 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050;
- (xii) RCW 63.04.010 through 63.04.780;
- (xiii) RCW 63.08.010 through 63.08.060;
- (xiv) RCW 63.12.010 through 63.12.030;
- (xv) RCW 63.16.010 through 63.16.900;

(xvi) RCW 65.08.010, 65.08.020 and 65.08.040; and
 (xvii) RCW 81.32.010 through 81.32.561: *Provided*, That such repeal shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050).

(b) (i) Chapter 99, Laws of 1913;

(ii) Chapter 100, Laws of 1939;

(iii) Section 4, chapter 106, Laws of 1959 and sections 30.16.020, 30.16.030, 30.16.040 and 30.16.050, chapter 33, Laws of 1955;

(iv) Sections 30.40.030, 30.40.040 and 30.40.050, chapter 33, Laws of 1955;

(v) Section 3, chapter 194, Laws of 1963 and sections 30.52.010 through 30.52.160, chapter 33, Laws of 1955;

(vi) Section 11, chapter 263, Laws of 1959, section 3, chapter 214, Laws of 1953, sections 1, 2 and 3, chapter 284, Laws of 1943, section 1, chapter 76, Laws of 1943, section 1, chapter 121, Laws of 1939, section 1, chapter 156, Laws of 1929, sections 1, 2, 3, 4, 5, 6 and 7, chapter 98, Laws of 1899, sections 1986, 1987 and 1988, Code of 1881, section 1, page 104, Laws of 1879, section 1, page 286, Laws of 1877 and section 1, page 43, Laws of 1875;

(vii) Sections 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998, Code of 1881, sections 4, 5, 6, 7, 8, 9, 10, 11 and 12, pages 105 and 106, Laws of 1879 and sections 18, 19, 20, 22, 23, 24 and 28, page 47, Laws of 1875;

(viii) Sections 618 and 619, Code of 1881 and section 572, page 147, Laws of 1869;

(ix) Section 12, chapter 263, Laws of 1959, section 4, chapter 214, Laws of 1953, section 4, chapter 284, Laws of 1943, sections 1 and 2, chapter 133, Laws of 1937 and sections 8, 9 and 11, chapter 98, Laws of 1899;

(x) Sections 1 and 2, chapter 249, Laws of 1957 and chapter 71, Laws of 1943;

(xi) Sections 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050, chapter 35, Laws of 1955;

(xii) Chapter 142, Laws of 1925 extraordinary session;

(xiii) Sections 1, 2, 3 and 4, chapter 247, Laws of 1953, section 1, chapter 98, Laws of 1943, sections 1, 2, 3 and 4, chapter 122, Laws of 1939 and sections 1, 2, 3 and 4, chapter 135, Laws of 1925 extraordinary session;

(xiv) Section 22, chapter 236, Laws of 1963, section 1, chapter 159, Laws of 1961, sections 1 and 2, chapter 196, Laws of 1937, sections 1 and 2, chapter 129, Laws of 1933, section 1, chapter 120, Laws of 1925 extraordinary session, section 1, chapter 95, Laws of 1915, sections 1 and 2, chapter 6, Laws of 1903 and sections 1 and 2, chapter 106, Laws of 1893;

(xv) Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, chapter 8, Laws of 1947;

(xvi) Sections 1 and 2, chapter 72, Laws of 1899, section 2327, Code of 1881, section 4, page 413, Laws of 1863 and section 4, page 404, Laws of 1854; and

(xvii) Chapter 159, Laws of 1915 and sections 81.32.011 through 81.32.561, chapter 14, Laws of 1961.

(2) Transactions validly entered into before the effective date specified in RCW 62A.10-101 and the rights, duties and interests flowing from them remain valid

thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Title as though such repeal or amendment had not occurred. [1965 ex.s. c 157 § 10-102.]

62A.10-103 General repealer. Except as provided in the following section, all acts and parts of acts inconsistent with this Title are hereby repealed. [1965 ex.s. c 157 § 10-103.]

62A.10-104 Laws not repealed. (1) The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (RCW 62A.1-201).

(2) This Title does not repeal chapter 150, Laws of 1961 (chapter 21.17 RCW), cited as the Uniform Act for the Simplification of Fiduciary Security Transfers, and if in any respect there is any inconsistency between that Act and the Article of this Title on investment securities (Article 8) the provisions of the former Act shall control. [1965 ex.s. c 157 § 10-104.]

Title 63

PERSONAL PROPERTY

Chapters

- 63.14** **Retail installment sales of goods and services.**
- 63.18** **Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness.**
- 63.21** **Lost and found property.**
- 63.24** **Unclaimed property in hands of bailee.**
- 63.28** **Uniform disposition of unclaimed property.**
- 63.32** **Unclaimed property in hands of city police.**
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- 63.44** **Joint tenancies.**
- 63.48** **Escheat of postal savings system accounts.**

Attachment: Chapter 7.12 RCW.
Chattel mortgages: Article 62A.9 RCW.
Community property: Chapter 26.16 RCW.
Corporate seals, effect of absence from instrument: RCW 64.04.105.
Corporate shares issued or transferred in joint tenancy form—Presumption—Transfer pursuant to direction of survivor: RCW 23A.08.320.
County property: Chapter 36.34 RCW.
Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.
Duration of trusts for employee benefits: Chapter 49.64 RCW.
Enforcement of judgments: Title 6 RCW.
Fox, mink, marten declared personalty: RCW 16.72.030.
Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.
Intergovernmental disposition of personal property: Chapter 39.33 RCW.
Leases, satisfaction: Chapter 61.16 RCW.
Liens: Title 60 RCW.
Personal property sales, regulation of, generally: Titles 18 and 19 RCW.
Powers of appointment: Chapter 64.24 RCW.
Probate: Title 11 RCW.
Quieting title to personalty: RCW 7.28.310, 7.28.320.
Real property and conveyances: Title 64 RCW.
Replevin: Chapters 7.64, 12.28 RCW.
Safe deposit companies: Chapter 22.28 RCW.
Separate property: Chapter 26.16 RCW.
State institutions, property of inmates, residents: RCW 71.02.240, 72.23.230–72.23.250, 72.33.180.
Taxation, excise: Title 82 RCW.
Taxation, inheritance and gift: Title 83 RCW.
Taxation, property: Title 84 RCW.
The Washington Principal and Income Act: Chapter 11.104 RCW.
Transfers in trust: RCW 19.36.020.
Uniform gifts to minors act: Chapter 21.24 RCW.

Chapter 63.14

RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

Sections

- 63.14.010
- 63.14.020
- 63.14.030
- 63.14.040
- 63.14.050
- 63.14.060
- 63.14.070
- 63.14.080
- 63.14.090
- 63.14.100
- 63.14.110
- 63.14.120
- 63.14.130
- 63.14.140
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Definitions.
Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size.
Retail installment contracts—Delivery to buyer of copy—Acknowledgment of delivery.
Retail installment contracts—Contents.
Retail installment contracts—Multiple documents permissible where original applies to purchases from time to time.
Retail installment contracts—Mail orders based on catalog or other printed solicitation.
Retail installment contracts—Seller not to obtain buyer's signature when essential blank spaces not filled—Exceptions.
Retail installment contracts—Prepayment in full of unpaid time balance—Refund of unearned service charge—"Rule of seventy-eighths".
Retail installment contracts, retail charge agreements—Delinquency or collection charges—Attorney's fees, court costs—Other provisions not inconsistent with chapter are permissible.
Receipt for cash payment—Retail installment contracts, statement of payment schedule and total amount unpaid.
Consolidation of subsequent purchases with previous contract.
Retail charge agreements—Information to be furnished by seller.
Retail installment contracts and retail charge agreements—Service charge, composition, other fees and charges prohibited—Maximums.
Retail installment contracts and retail charge agreements—Insurance.
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Declaratory judgment action to establish if service charge is excessive.
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Conduct or agreement of buyer does not waive remedies.
Violations—Penalties.
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Severability—1963 c 236.
Severability—1967 c 234.
Saving—1963 c 236.
Effective date—1963 c 236.
Effective date—Saving—1967 c 234.

63.14.010 Definitions. In this chapter, unless the context otherwise requires:

(1) "Goods" means all chattels personal when purchased primarily for personal, family or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(2) "Services" means work, labor or services of any kind when purchased primarily for personal, family or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair or improvement of goods and includes repairs, alterations or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer or official of either as in the case of transportation services;

(3) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(4) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(5) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(6) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease;

(7) "Retail charge agreement," "revolving charge agreement" or "charge agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to

be computed in relation to the buyer's unpaid balance from time to time;

(8) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees;

(9) "Cash sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration and license fees, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations or improvements;

(10) "Official fees" means the amount of the fees prescribed by law for filing, recording or otherwise perfecting, and releasing or satisfying, a retained title, lien or other security interest created by a retail installment transaction;

(11) "Time balance" means the principal balance plus the service charge;

(12) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees;

(13) "Person" means an individual, partnership, joint venture, corporation, association or any other group, however organized;

(14) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period. [1972 ex.s. c 47 § 1; 1963 c 236 § 1.]

Effective date—1972 ex.s. c 47: "This 1972 amendatory act shall take effect on January 1, 1973." [1972 ex.s. c 47 § 5.] This applies to the 1972 ex.s. amendments to RCW 63.14.010, 63.14.040, 63.14.120 and 63.14.154.

63.14.020 Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size. Every retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in RCW 63.14.050, 63.14.060 and 63.14.110: *Provided*, That where the buyer's obligation to pay the time balance is represented by a promissory note secured by a chattel mortgage, the promissory note may be a separate instrument if the mortgage recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage: *Provided further*, That any such promissory note or other evidence of indebtedness executed by the buyer shall not, when assigned or negotiated, cut off as to third

parties any right of action or defense which the buyer may have against the seller, and each such promissory note or other evidence of indebtedness shall contain a statement to that effect: *And provided further*, That in a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage on the real property contained in a separate document. Home improvement retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to this chapter.

The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in RCW 63.14.060 and 63.14.070. The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight point type. [1967 c 234 § 1; 1963 c 236 § 2.]

63.14.030 Retail installment contracts—Delivery to buyer of copy—Acknowledgment of delivery. The retail seller shall deliver to the retail buyer, at the time the buyer signs the contract a copy of the contract as signed by the buyer, unless the contract is completed by the buyer in situations covered by RCW 63.14.060, and if the contract is accepted at a later date by the seller the seller shall mail to the buyer at his address shown on the retail installment contract a copy of the contract as accepted by the seller or a copy of the memorandum as required in RCW 63.14.060. Until the seller does so, the buyer shall be obligated to pay only the cash sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature. [1967 c 234 § 2; 1963 c 236 § 3.]

63.14.040 Retail installment contracts—Contents.

(1) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or service furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below:

(1) (a) The cash sale price of each item of goods or services;

(2) (b) The amount of the buyer's down payment, if any, identifying the amounts paid in money and allowed for goods traded in;

(3) (c) The difference between items (1)(a) and (2)(b);

(4) (d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;

(5) (e) The aggregate amount of official fees, if any;

(6) (f) The principal balance, which is the sum of items (3)(c), (4)(d) and (5)(e);

(7) (g) The dollar amount or rate of the service charge;

(8) (h) The amount of the time balance owed by the buyer to the seller, which is the sum of items (6)(f) and (7)(g), if (7)(g) is stated in a dollar amount; and

(9) (i) Except as otherwise provided in the next two sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such balance. If installment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

Additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer.

(2) Every retail installment contract shall contain the following notice in ten point bold face type or larger directly above the space reserved in the contract for the signature of the buyer: "NOTICE TO BUYER:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the service charge.

(d) The service charge does not exceed _____% (must be filled in) per annum computed monthly and may not lawfully exceed twelve percent per annum computed monthly.

(e) You may cancel this contract if it is solicited in person, and you sign it, at a place other than the seller's business address shown on the contract, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the contract which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing this contract. If you choose to cancel this contract, you must return or make available to the seller at the place of delivery any merchandise, in its original condition, received by you under this contract."

Clause (2)(e) needs to be included in the notice only if the contract is solicited in person by the seller or his representative, and the buyer signs it, at a place other than the seller's business address shown on the contract. [1972 ex.s. c 47 § 2; 1969 c 2 § 1 (Initiative Measure No. 245 § 1); 1967 c 234 § 3; 1963 c 236 § 4.]

Reviser's note: Chapter 2, Laws of 1969, codified herein as RCW 63.14.040, 63.14.120 and 63.14.130, was Initiative Measure No. 245, which was adopted by the people November 5, 1968. Governor's proclamation declaring approval of measure is dated December 5, 1968. State Constitution Art. 2 § 1(d) provides: ". . . Such measure [initiatives and referendums] shall be in operation on and after the thirtieth day after the election at which it is approved. . . ."

63.14.050 Retail installment contracts—Multiple documents permissible where original applies to purchases from time to time. A retail installment contract may be contained in more than one document, provided that one such document shall be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by RCW 63.14.040 and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement may at the option of the seller constitute the memorandum required by RCW 63.14.110. [1963 c 236 § 5.]

63.14.060 Retail installment contracts—Mail orders based on catalog or other printed solicitation. Retail installment contracts negotiated and entered into by mail or telephone without solicitation in person by salesmen or other representatives of the seller and based upon a catalog of the seller, or other printed solicitation of business, if such catalog or other printed solicitation clearly sets forth the cash sale prices and other terms of sales to be made through such medium, may be made as provided in this section. The provisions of this chapter with respect to retail installment contracts shall be applicable to such sales, except that the retail installment contract, when completed by the buyer need not contain the items required by RCW 63.14.040.

When the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by RCW 63.14.040 to be included in a retail installment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in RCW 63.14.030, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment payable under the contract: *Provided*, That if the catalog or other printed solicitation does not set forth all of the other terms of sales in addition to the cash sales prices, such memorandum shall be delivered to the buyer prior to or at the time of delivery of the goods or services. [1967 c 234 § 4; 1963 c 236 § 6.]

63.14.070 Retail installment contracts—Seller not to obtain buyer's signature when essential blank spaces not filled—Exceptions. The seller shall not obtain the signature of the buyer to any contract when it contains blank spaces of items which are essential provisions of the transaction except as provided in RCW 63.14.060: *Provided, however*, That if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. [1963 c 236 § 7.]

63.14.080 Retail installment contracts—Prepayment in full of unpaid time balance—Refund of unearned service charge—"Rule of seventy-eighths". For the purpose of this section "periodic time balance" means the unpaid portion of the time balance as of the last day of each month, or other uniform time interval established by the regular consecutive payment period scheduled in a retail installment contract.

Notwithstanding the provisions of any retail installment contract to the contrary, and if the rights of the purchaser have not been terminated or forfeited under the terms of the contract, any buyer may prepay in full the unpaid portion of the time balance thereof at any time before its final due date and, if he does so, he shall receive a refund credit of the unearned portion of the service charge for such prepayment. The amount of such refund credit shall be computed according to the "rule of seventy-eighths", that is it shall represent at least as great a portion of the original service charge, as the sum of the periodic time balances not yet due bears to the sum of all the periodic time balances under the schedule of payments in the contract: *Provided*, That where the earned service charge (total service charge minus refund credit) thus computed is less than the following minimum service charge: fifteen dollars where the principal balance is not in excess of two hundred and fifty dollars, twenty-five dollars where the principal balance exceeds two hundred and fifty dollars but is not in excess of five hundred dollars, thirty-seven dollars and fifty cents where the principal balance exceeds five hundred dollars but is not in excess of one thousand dollars, and fifty dollars where the principal balance exceeds one thousand dollars; then such minimum service charge shall be deemed to be the earned service charge: *And provided further*, That where the amount of such refund credit is less than one dollar, no refund credit need be made. [1967 c 234 § 5; 1963 c 236 § 8.]

63.14.090 Retail installment contracts, retail charge agreements—Delinquency or collection charges—Attorney's fees, court costs—Other provisions not inconsistent with chapter are permissible. The holder of any retail installment contract or retail charge agreement may not collect any delinquency or collection charges, including any attorney's fee and court costs and disbursements, unless the contract or charge agreement so provides. In such cases, the charges shall be reasonable, and no attorney's fee may be recovered unless the contract or charge agreement is referred for collection to an attorney not a salaried employee of the holder.

The contract or charge agreement may contain other provisions not inconsistent with the purposes of this chapter, including but not limited to provisions relating to refinancing, transfer of the buyer's equity, construction permits and title reports. [1963 c 236 § 9.]

63.14.100 Receipt for cash payment—Retail installment contracts, statement of payment schedule and total amount unpaid. A buyer shall be given a written receipt for any payment when made in cash. Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a

written statement of the dates and amounts of payments and the total amount unpaid under the contract. Such a statement shall be given the buyer once without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of one dollar for each additional statement so supplied. [1963 c 236 § 10.]

63.14.110 Consolidation of subsequent purchases with previous contract. (1) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of the previous contracts. All the provisions of this chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this subsection. In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this section, it shall be sufficient if the seller shall prepare a written memorandum of each such subsequent purchase, in which case the provisions of RCW 63.14.020, 63.14.030 and 63.14.040 shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memoranda or otherwise, such memorandum shall set forth with respect to each subsequent purchase items (a) to (g) inclusive of RCW 63.14.040(1), and in addition, if the service charge is stated as a dollar amount, the amount of the time balance owed by the buyer to the seller for the subsequent purchase, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any, in accordance with RCW 63.14.040. If the service charge is not stated in a dollar amount, in addition to the items (a) to (g) inclusive of RCW 63.14.040(1), the memorandum shall set forth the outstanding balance of the previous contract or contracts, the consolidated outstanding balance and the revised installments applicable to the consolidated outstanding balance, in accordance with RCW 63.14.040.

The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(2) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation:

(a) The entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied on the previous purchases;

(b) The amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase.

(c) Each payment received after the subsequent purchase shall be deemed to be allocated to all of the various time balances in the same proportion or ratio as the

original cash sale prices of the various retail installment transactions bear to one another: *Provided*, That the seller may elect, where the amount of each installment payment is increased in connection with the subsequent purchase, to allocate only the increased amount to the time balance of the subsequent retail installment transaction, and to allocate the amount of each installment payment prior to the increase to the time balance(s) existing at the time of the subsequent purchase.

The provisions of this subsection shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request. [1967 c 234 § 6; 1963 c 236 § 11.]

63.14.120 Retail charge agreements—Information to be furnished by seller. (1) At or prior to the time a retail charge agreement is made the seller shall advise the buyer in writing, on the application form or otherwise, or orally that a service charge will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the service charge will be computed, and that the buyer may at any time pay his total unpaid balance: *Provided*, That if this information is given orally, the seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to him at his address, a memorandum setting forth this information.

(2) The seller or holder of a retail charge agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon, in which there is any unpaid balance thereunder, which statement shall set forth the following:

(a) The unpaid balance under the retail charge agreement at the beginning and at the end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased during the period, the cash sale price and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any service charge for such period; and

(e) A legend to the effect that the buyer may at any time pay his total unpaid balance.

(3) Every retail charge agreement shall contain the following notice in ten point bold face type or larger directly above the space reserved in the charge agreement for the signature of the buyer: **NOTICE TO BUYER:**

(a) Do not sign this retail charge agreement before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this charge agreement at the time you sign it.

(c) You may at any time pay off the full unpaid balance under this charge agreement.

(d) The monthly service charge may not lawfully exceed the greater of one percent of the outstanding balance (twelve percent per year computed monthly) or one dollar.

(e) You may cancel any purchases made under this charge agreement if the seller or his representative solicited in person such purchase, and you sign an agreement for such purchase, at a place other than the seller's business address shown on the charge agreement, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the charge agreement, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the purchase agreement. If you choose to cancel this purchase, you must return or make available to seller at the place of delivery any merchandise, in its original condition, received by you under this purchase agreement. [1972 ex.s. c 47 § 3; 1969 c 2 § 2 (Initiative Measure No. 245 § 2); 1967 c 234 § 7; 1963 c 236 § 12.]

Effective date—1969 c 2 (Initiative Measure No. 245): See note following RCW 63.14.040.

63.14.130 Retail installment contracts and retail charge agreements—Service charge, composition, other fees and charges prohibited—Maximums. The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer.

(1) The service charge, in a retail installment contract, shall not exceed the highest of the following:

(a) One percent per month on the outstanding unpaid balances; or

(b) Ten dollars.

(2) The service charge in a retail charge agreement, revolving charge agreement or charge agreement, shall not exceed one percent per month on the outstanding unpaid balances. If the service charge so computed is less than one dollar for any month, then one dollar may be charged.

(3) A service charge may be computed on the median amount within a range which does not exceed ten dollars and which is a part of a published schedule of consecutive ranges applied to an outstanding balance, provided the median amount is used in computing the service charge for all balances within such range.

(4) The service charge in a retail installment contract or charge agreement shall not exceed the rate of twelve percent per annum, computed monthly. A service charge computed by one of the foregoing methods, or within the permitted minimum charges, shall be deemed not to be in excess of twelve percent per annum computed monthly. [1969 c 2 § 3 (Initiative Measure No. 245 § 3); 1967 c 234 § 8; 1963 c 236 § 13.]

Effective date—1969 c 2 (Initiative Measure No. 245): See note following RCW 63.14.040.

63.14.140 Retail installment contracts and retail charge agreements—Insurance. If the cost of any insurance is included in the retail installment contract or retail charge agreement:

(1) The contract or agreement shall state the nature, purpose, term, and amount of such insurance, and in connection with the sale of a motor vehicle, the contract shall state that the insurance coverage ordered under the terms of this contract does not include "bodily injury liability," "public liability," and "property damage liability" coverage, where such coverage is in fact not included;

(2) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller;

(3) The amount, included for such insurance, shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer, except where the amount is less than one dollar;

(4) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at his address as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured. [1963 c 236 § 14.]

63.14.150 Retail installment contracts and retail charge agreements—Agreements by buyer not to assert claim or defense or to submit to suit in another county invalid. No provision of a retail installment contract or retail charge agreement shall be valid by which the buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale, or by which the buyer agrees to submit to suit in a county other than the county where the buyer signed the contract or where the buyer resides or has his principal place of business. [1967 c 234 § 9; 1963 c 236 § 15.]

63.14.152 Declaratory judgment action to establish if service charge is excessive. The seller, holder, or buyer may bring an action for declaratory judgment to establish whether service charges contracted for or received in connection with a retail installment transaction are in excess of those allowed by *this 1967 amendatory act. Such an action shall be brought against the current holder or against the buyer or his successor in interest or, if the entire principal balance has been fully paid, by the buyer or his successor in interest against the holder to whom the final payment was made. No such action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal balance is fully paid, whichever first occurs. If the buyer commences such an action and fails to establish that the service charge is in excess of that allowed by RCW 63.14.130, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees and costs from the buyer. [1967 c 234 § 11.]

*Reviser's note: "this 1967 amendatory act" refers to 1967 c 234; which is codified as RCW 63.14.152 through 63.14.159, 63.14.901,

63.14.921, and the 1967 amendments to RCW 63.14.020, 63.14.030, 63.14.040, 63.14.060, 63.14.080, 63.14.110, 63.14.120, 63.14.130, 63.14.150 and 63.14.180.

63.14.154 Cancellation of transaction by buyer—

Procedure. (1) In addition to any other rights he may have, the buyer shall have the right to cancel a retail installment transaction for other than the seller's breach:

(a) If the retail installment transaction was entered into by the buyer and solicited in person by the seller or his representative at a place other than the seller's address, which may be his main or branch office, shown on the contract; and

(b) If the buyer returns goods received or makes them available to the seller as provided in clause (b) of subsection (2) of this section.

(c) By sending notice of such cancellation to the seller at his place of business as set forth in the contract or charge agreement by certified mail, return receipt requested, which shall be posted not later than midnight of the third day (excluding Sundays and holidays) following the date the buyer signs the contract or charge agreement.

(2) In the event of cancellation pursuant to this section:

(a) The seller shall, without request, refund to the buyer within ten days after such cancellation all deposits, including any down payment, made under the contract or charge agreement and shall return all goods traded in to the seller on account or in contemplation of the contract less any reasonable costs actually incurred in making ready for sale the goods so traded in;

(b) The seller shall be entitled to reclaim and the buyer shall return or make available to the seller at the place of delivery in its original condition any goods received by the buyer under the contract or charge agreement;

(c) The buyer shall incur no additional liability for such cancellation. [1972 ex.s. c 47 § 4; 1967 c 234 § 12.]

63.14.156 Extension or deferment of payments—

Agreement, charges. The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date or defer a scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless a written acknowledgment of such extension or deferment is sent or delivered to the buyer. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed those permitted by RCW 63.14.130 (a), (b), or (c) on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral

charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract, subject to the provisions of RCW 63.14.140. [1967 c 234 § 13.]

63.14.158 Refinancing agreements—Costs—

Contents. The holder of a retail installment contract or contracts may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance or balances of the contract or contracts by providing for a new schedule of installment payments.

The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same but such refinance charge (1) shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under RCW 63.14.080 if he had prepaid in full his obligations under the contract or contracts, but in computing such refund credit there shall not be allowed the minimum earned service charge as authorized by clause (d) of subsection (1) of such section, and (2) may not exceed the rate of service charge provided under RCW 63.14.130. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided for therein, subject to the provisions of RCW 63.14.140.

The refinancing agreement shall set forth the amount of the unpaid time balance or balances to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, the amount or rate of the service charge under the refinancing agreement, any additional cost of insurance and of official fees to the buyer, the new unpaid time balance, if the service charge is stated as a dollar amount, and the new schedule of installment payments. Where there is a consolidation of two or more contracts then the provisions of RCW 63.14.110 shall apply. [1967 c 234 § 14.]

Minimum earned service charges: RCW 63.14.080.

63.14.159 New payment schedule—When authorized.

In the event a contract provides for the payment of any installment which is more than double the amount of the average of the preceding installments the buyer upon default of this installment, shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the buyer, the periodic payments under the new schedule shall not be substantially greater than the average of the preceding installments. This section shall not apply if the payment schedule is adjusted to the seasonal or irregular income of the buyer or to accommodate the nature of the buyer's employment. [1967 c 234 § 15.]

63.14.160 Conduct or agreement of buyer does not waive remedies. No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement or purchases thereunder shall constitute a valid waiver of any of the provisions of this chapter or of any remedies granted to the buyer by law. [1963 c 236 § 16.]

63.14.170 Violations—Penalties. Any person who shall wilfully and intentionally violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or both. Violation of any order or injunction issued pursuant to this chapter shall constitute prima facie proof of a violation of this section. [1963 c 236 § 17.]

63.14.180 Noncomplying person barred from recovery of service charge, etc.—Remedy of buyer—Extent of recovery. Any person who enters into a retail installment contract or charge agreement which does not comply with the provisions of this chapter or who violates any provision of this chapter except as a result of an accidental or bona fide error shall be barred from the recovery of any service charge, official fees, or any delinquency or collection charge under or in connection with the related retail installment contract or purchases under a retail charge agreement; but such person may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to such person of any insurance included in the transaction: *Provided*, That if the service charge is in excess of that allowed by RCW 63.14.130, except as the result of an accidental or bona fide error, the buyer shall be entitled to an amount equal to the total of (1) twice the amount of the service charge paid, and (2) the amount of the service charge contracted for and not paid, plus (3) costs and reasonable attorneys' fees. The reduction in the cash price by the application of the above sentence shall be applied to diminish pro rata each future installment of principal amount payable under the terms of the contract or agreement. [1967 c 234 § 10; 1963 c 236 § 18.]

63.14.190 Restraint of violations. The attorney general or the prosecuting attorney may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1963 c 236 § 19.]

63.14.200 Assurance of discontinuance of unlawful practices. In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in

Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided in RCW 63.14.190 and for the purpose of RCW 63.14.180 hereof: *Provided*, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney. [1963 c 236 § 20.]

63.14.210 Violation of order or injunction—Penalty. Any person who violates any order or injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1963 c 236 § 21.]

63.14.900 Severability—1963 c 236. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1963 c 236 § 23.]

63.14.901 Severability—1967 c 234. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1967 c 234 § 16.]

63.14.910 Saving—1963 c 236. The provisions of this chapter shall not invalidate or make unlawful retail installment contracts or retail charge agreements executed prior to the effective date hereof. [1963 c 236 § 24.]

63.14.920 Effective date—1963 c 236. This chapter shall take effect October 1, 1963. [1963 c 236 § 25.]

63.14.921 Effective date—Saving—1967 c 234. *This 1967 amendatory act shall take effect on January 1, 1968. Nothing in *this 1967 amendatory act shall be construed to affect the validity of any agreement or contractual relationship entered into prior to such date, except that the rate of any service charge computed periodically on the outstanding balance in excess of that allowed by *this 1967 amendatory act shall be reduced to a permissible rate on or before January 1, 1968. [1967 c 234 § 17.]

*Reviser's note: "This 1967 amendatory act" and "this 1967 amendatory act" [1967 c 234], see note following RCW 63.14.152.

Chapter 63.18

LEASE OR RENTAL OF PERSONAL PROPERTY—DISCLAIMER OF WARRANTY OF MERCHANTABILITY OR FITNESS

Section
63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions.

63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions. In any lease or rental agreement for the lease of movable personal property for use primarily in this state (other than a lease under which the lessee is authorized to use such property at no charge), if the rental or other consideration paid or payable thereunder is at a rate which if computed on an annual basis would be six thousand dollars per year or less, no provision thereof purporting to disclaim any warranty of merchantability or fitness for particular purposes which may be implied by law shall be enforceable unless either (1) the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted, or (2) the lessee is engaged in a public utility business or a public service business subject to regulation by the United States or this state. [1974 ex.s. c 180 § 3.]

Exclusion or modification of warranties: RCW 62A.2-316.

Chapter 63.21

LOST AND FOUND PROPERTY

Sections
63.21.010 Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication.
63.21.020 Circumstances extinguishing finder's claim to property.
63.21.030 Release of property to finder—Limitations—Payment to governmental entity of portion of appraised value—Expiration of finder's claim.
63.21.040 Failure to comply with chapter—Forfeiture of right to property.
63.21.050 Duties of chief law enforcement officer receiving found property.
63.21.060 Duties of governmental entity acquiring lost property—Disposal of property.
63.21.070 Claim to found property by employee, officer, or agent of governmental entity—Limitation.
63.21.080 Chapter not applicable to certain unclaimed property.
63.21.900 Severability—1979 1st ex.s. c 85.

63.21.010 Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication. Any person who finds property that is not unlawful to possess, the owner of which is unknown, and who wishes to claim the found property, shall:

(1) Within seven days of the finding acquire a signed statement setting forth an appraisal of the current market value of the property prepared by a qualified person engaged in buying or selling like items or by a district court judge;

(2) Within seven days report the find of property and surrender, if requested, the property and a copy of the evidence of the value of the property to the chief law enforcement officer, or his or her designated representative, of the governmental entity where the property was found, and serve written notice upon the officer of the finder's intent to claim the property if the owner does not make out his or her right to it under this chapter; and

(3) Within thirty days of the finding cause notice of the finding to be published at least once a week for two successive weeks in a newspaper of general circulation in the county where the property was found. [1979 1st ex.s. c 85 § 1.]

63.21.020 Circumstances extinguishing finder's claim to property. The finder's claim to the property shall be extinguished:

(1) If the owner satisfactorily establishes, within sixty days after the find was reported to the appropriate officer, the owner's right to possession of the property; or

(2) If the chief law enforcement officer determines and so informs the finder that the property is illegal for the finder to possess. [1979 1st ex.s. c 85 § 2.]

63.21.030 Release of property to finder—Limitations—Payment to governmental entity of portion of appraised value—Expiration of finder's claim. (1) The found property shall be released to the finder and become the property of the finder sixty days after the find was reported to the appropriate officer if no owner has been found, or sixty days after the final disposition of any judicial or other official proceeding involving the property, whichever is later. The property shall be released only after the finder has presented evidence of:

(a) Compliance with the publication requirement of this chapter; and

(b) If the property is valued at more than twenty-five dollars, payment to the treasurer of the governmental entity handling the found property, the amount of five dollars, or ten percent of the appraised value of the property, whichever is greater, which amount shall be deposited in the general fund of the governmental entity.

(2) When ninety days have passed after the found property was reported to the appropriate officer, or ninety days after the final disposition of a judicial or other proceeding involving the found property, and the finder has not completed the requirements of this chapter, the finder's claim shall be deemed to have expired and the found property may be disposed of as unclaimed property under chapter 63.32 or 63.40 RCW. Such laws shall also apply whenever a finder states in writing that he or she has no intention of claiming the found property. [1979 1st ex.s. c 85 § 3.]

63.21.040 Failure to comply with chapter—Forfeiture of right to property. Any finder of property who fails to discharge the duties imposed by this chapter shall forfeit all right to the property and shall be liable for the full value of the property to its owner. [1979 1st ex.s. c 85 § 4.]

63.21.050 Duties of chief law enforcement officer receiving found property. The chief law enforcement officer or his or her designated representative to whom a finder surrenders property, shall:

- (1) Advise the finder if the found property is illegal for him or her to possess;
- (2) Advise the finder if the found property is to be held as evidence in judicial or other official proceedings;
- (3) Advise the finder in writing of the procedures to be followed in claiming the found property;
- (4) If the property is valued at twenty-five dollars or less, allow the finder to retain the property if it is determined there is no reason for the officer to retain the property;
- (5) If the property exceeds twenty-five dollars in value and has been requested to be surrendered to the law enforcement agency, retain the property for sixty days before it can be claimed by the finder under this chapter, unless the owner shall have recovered the property;
- (6) If the property is held as evidence in judicial or other official proceedings, retain the property for sixty days after the final disposition of the judicial or other official proceeding, before it can be claimed by the finder or owner under the provisions of this chapter;
- (7) After the required number of days have passed, and if no owner has been found, surrender the property to the finder according to the requirements of this chapter; or
- (8) If neither the finder nor the owner claim the property retained by the officer within thirty days of the time when the claim can be made, the property shall be disposed of as unclaimed property under chapter 63.32 or 63.40 RCW. [1979 1st ex.s. c 85 § 5.]

63.21.060 Duties of governmental entity acquiring lost property—Disposal of property. Any governmental entity that acquires lost property shall attempt to notify the apparent owner of the property. If the property is not returned to a person validly establishing ownership or right to possession of the property, the governmental entity shall forward the lost property within thirty days but not less than ten days after the time the governmental entity acquires the lost property to the chief law enforcement officer, or his or her designated representative, of the county in which the property was found, except that if the property is found within the borders of a city or town the property shall be forwarded to the chief law enforcement officer of the city or town or his or her designated representative. A governmental entity may elect to retain property which it acquires and dispose of the property as provided by chapter 63.32 or 63.40 RCW. [1979 1st ex.s. c 85 § 6.]

63.21.070 Claim to found property by employee, officer, or agent of governmental entity—Limitation. An employee, officer, or agent of a governmental entity who finds or acquires any property covered by this chapter while acting within the course of his or her employment may not claim possession of the lost property as a finder under this chapter unless the governing body of the governmental entity has specifically provided, by ordinance,

resolution, or rule for such a claim. [1979 1st ex.s. c 85 § 7.]

63.21.080 Chapter not applicable to certain unclaimed property. This chapter shall not apply to:

- (1) Motor vehicles under chapter 46.52 RCW;
- (2) Unclaimed property in the hands of a bailee under chapter 63.24 RCW; and
- (3) Uniform disposition of unclaimed property under chapter 63.28 RCW. [1979 1st ex.s. c 85 § 8.]

63.21.900 Severability—1979 1st ex.s. c 85. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 1st ex.s. c 85 § 11.]

Chapter 63.24

UNCLAIMED PROPERTY IN HANDS OF BAILEE

Sections

63.24.010	Bailee to keep record of stored property.
63.24.020	Notice to owner.
63.24.030	Property unclaimed—Sale authorized.
63.24.040	Notice of intention to sell.
63.24.050	Affidavit to be filed with justice of the peace.
63.24.060	Inventory by justice.
63.24.070	Notice of sale.
63.24.080	Return of sale and proceeds.
63.24.090	Disposition of proceeds—Statement.
63.24.100	Duty of county treasurer.
63.24.110	Claim by owner.
63.24.120	Unclaimed proceeds to school fund.
63.24.130	Perishable property, how sold.
63.24.140	Fees.

63.24.010 Bailee to keep record of stored property. Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him, a description of such property, with the date of reception thereof. [Code 1881 § 3252; RRS § 8416. Prior: 1863 p 437 § 1; 1854 p 383 § 1.]

63.24.020 Notice to owner. If such property shall not have been left with such consignee or bailee, for the purpose of being forwarded or disposed of according to directions received of [by] such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him, and deposited in a post office, of the reception of such property. [Code 1881 § 3253; RRS § 8417. Prior: 1863 p 438 § 2; 1854 p 383 § 2.]

63.24.030 Property unclaimed—Sale authorized. If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell the same, in the

manner provided in this chapter. [Code 1881 § 3254; RRS § 8418. Prior: 1863 p 438 § 3; 1854 p 384 § 3.]

63.24.040 Notice of intention to sell. Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence, or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the state; the last publication of such notice shall be at least eighteen days previous to the time of sale. [Code 1881 § 3255; RRS § 8419. Prior: 1863 p 438 § 4; 1854 p 384 § 4.]

63.24.050 Affidavit to be filed with justice of the peace. If the owner or person entitled to such property, shall not take the same away, and pay the charges thereon, after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown. [Code 1881 § 3256; RRS § 8420. Prior: 1863 p 438 § 5; 1854 p 384 § 5.]

63.24.060 Inventory by justice. Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order, under his hand, that the property therein described be sold by any constable of the precinct where the same shall be, at public auction. [Code 1881 § 3257; RRS § 8421. Prior: 1863 p 438 § 6; 1854 p 384 § 6.]

63.24.070 Notice of sale. It shall be the duty of such constable receiving such inventory and order, to give ten days' notice of the sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction, to the highest bidder, in the same manner as provided by law for sales under execution from justice's courts. [Code 1881 § 3258; RRS § 8422. Prior: 1863 p 439 § 7; 1854 p 384 § 7.]

Justice court, execution of judgments: Chapter 12.24 RCW.

63.24.080 Return of sale and proceeds. Upon completing the sale, the constable making the same shall endorse upon the order aforesaid, a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceeds of sale, after deducting his fees. [Code 1881 § 3259; RRS § 8429. Prior: 1863 p 439 § 8; 1854 p 384 § 8.]

63.24.090 Disposition of proceeds—Statement. From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person. [Code 1881 § 3260; RRS § 8424. Prior: 1863 p 439 § 9; 1854 p 384 § 9.]

63.24.100 Duty of county treasurer. The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement, so delivered to him by the justice. [Code 1881 § 3261; RRS § 8425. Prior: 1863 p 439 § 10; 1854 p 385 § 10.]

63.24.110 Claim by owner. If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him. [Code 1881 § 3262; RRS § 8426. Prior: 1863 p 439 § 11; 1854 p 385 § 11.]

63.24.120 Unclaimed proceeds to school fund. If the amount so deposited with any county treasurer shall not be claimed by the owner thereof, or his legal representatives, within the said five years, the same shall belong to the county, and shall be applied to the common school fund of said county. [Code 1881 § 3263; RRS § 8427. Prior: 1863 p 439 § 12; 1854 p 385 § 12.]

63.24.130 Perishable property, how sold. Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, the sale to be conducted, and the proceeds of the same to be applied in the manner before provided in this chapter: *Provided*, That any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in RCW 63.24.060. [Code 1881 § 3264; RRS § 8428. Prior: 1863 p 439 § 13; 1854 p 385 § 13.]

63.24.140 Fees. The fees allowed to any justice of the peace, under the provisions of this chapter, shall be three dollars for each day's service; and to any constable the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property. [Code 1881 § 3265; RRS § 8429. Prior: 1863 p 440 § 14; 1854 p 385 § 14.]

Chapter 63.28
UNIFORM DISPOSITION OF UNCLAIMED
PROPERTY

Sections

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Powers of appointment: Chapter 64.24 RCW.

Stolen and abandoned vehicles: RCW 46.52.110.

63.28.070 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Banking organization" means any bank, trust company, savings bank or land bank engaged in business in this state.

(2) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(3) "Financial organization" means any savings and loan association, building and loan association, industrial

loan company, *small loan company, credit union or investment company engaged in business in this state.

(4) "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

(5) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(6) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

(7) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(8) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. [1979 c 107 § 6; 1967 ex.s. c 26 § 27; 1955 c 385 § 1.]

***Reviser's note:** "small loan company" changed to "consumer finance business" by 1979 c 18. See chapter 31.08 RCW.

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

63.28.080 Property presumed abandoned—Banking, financial organizations or business associations. The following property held or owing by a banking or financial organization or business association is presumed abandoned:

(1) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend which has accrued thereon, excluding any charges that may lawfully be withheld, unless the owner has, within twelve years:

(a) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(b) Corresponded in writing with the banking organization concerning the deposit; or

(c) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(2) Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, and any interest or dividend which has accrued thereon, excluding any charges that may lawfully be withheld, unless the owner has within twelve years:

(a) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds or deposit; or

(c) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(3) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that, with the exception of traveler's checks, has been outstanding for more than twelve years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than fifteen years from the date of issuance, unless the owner has within twelve years, or within fifteen years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization. [1975-'76 2nd ex.s. c 59 § 1; 1955 c 385 § 2.]

63.28.090 Property presumed abandoned—Life insurance corporations. (1) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(2) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years, (a) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (b) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required. [1955 c 385 § 3.]

63.28.100 Property presumed abandoned—Utilities. The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for,

utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the date it became payable in accordance with the final determination or order providing for the refund. [1955 c 385 § 4.]

63.28.110 Property presumed abandoned—Business associations. Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized under the laws of or created in this state; or

(2) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state. [1955 c 385 § 5.]

63.28.120 Property presumed abandoned—Intangible personalty—Voluntary dissolution of business association, etc. Except as otherwise provided by the laws of this state, all intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned. [1955 c 385 § 6.]

63.28.130 Property presumed abandoned—Intangible personalty held in fiduciary capacity. All intangible personal property and any income or increment which has accrued thereon, held in fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this state; or

(2) If it is held by a business association, banking organization, or financial organization doing business in

this state, but not organized under the laws of or created in this state, and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this state; or

(3) If it is held in this state by any other person. [1955 c 385 § 7.]

63.28.140 Property presumed abandoned—Intangible personalty held by court, public body or official, etc. All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned. [1955 c 385 § 8.]

63.28.150 Property presumed abandoned—Intangible personalty not otherwise covered by chapter. All intangible personal property, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned: *Provided, however,* That this section shall not apply to safe deposit companies. [1955 ex.s. c 11 § 1; 1955 c 385 § 9.]

63.28.160 Property presumed abandoned—Exception when owner out of state—Reciprocity. If specific property which is subject to the provisions of RCW 63.28.080, 63.28.110, 63.28.120, 63.28.130, and 63.28.150 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this chapter if:

(1) It may be claimed as abandoned or escheated under the laws of such other state; and

(2) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state. [1955 c 385 § 10.]

63.28.170 Reports to department of revenue by holder or successor—Notice to owner. (1) Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the department of revenue with respect to the property as hereinafter provided.

(2) The report shall be in such form as the department of revenue may prescribe, and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of ten dollars or more presumed abandoned under this chapter;

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and

his last known address according to the life insurance corporation's records;

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under ten dollars each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Any other information which the department of revenue may prescribe as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1st of each year as of June 30th next preceding, but the report of life insurance corporations shall be filed before May 1st of each year as of December 31st next preceding. The department of revenue may postpone the reporting date upon written request by any person required to file a report.

(5) If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, endeavor to communicate with the owner and take reasonable steps to prevent abandonment from being presumed. The mailing of notice to the last known address of the owner by the holder shall constitute compliance with this paragraph and no further act on the part of the holder shall be necessary.

(6) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer. [1955 c 385 § 11.]

63.28.180 Notice by department of revenue—Contents—Publication and mailing. (1) Within one hundred twenty days from the filing of the report required by RCW 63.28.170, the department of revenue shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be entitled "Notice of Names of Persons Appearing to be owners of Abandoned Property" and shall contain:

(a) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(b) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the department of revenue.

(c) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the department of revenue.

(3) The department of revenue is not required to publish in such notice any item of less than twenty-five dollars unless it deems such publication to be in the public interest.

(4) Within one hundred twenty days from the receipt of the report required by RCW 63.28.170, the department of revenue shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this chapter.

(5) The mailed notice shall contain:

(a) A statement that, according to a report filed with the department of revenue, property is being held to which the addressee appears entitled.

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the department of revenue. [1955 c 385 § 12.]

63.28.190 Delivery by holder to department of revenue—Department of revenue publication. (1) Every person who has filed a report as provided by RCW 63.28.170 shall within twenty days after the time specified in RCW 63.28.180 for claiming the property from the holder pay or deliver to the department of revenue all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in RCW 63.28.180, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the department of revenue, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(2) Any person holding property as specified in RCW 63.28.080 through 63.28.150 and who has reason to believe that the same is abandoned and that the true owner thereof cannot be located with reasonable diligence and effort, may make his report and deliver such property to the department of revenue prior to the expiration of the time provided. The department of revenue shall include information relating to such property in the next publication of like property as provided by RCW 63.28.180. [1955 ex.s. c 11 § 2; 1955 c 385 § 13.]

63.28.200 Delivery by holder to department of revenue—Liability for property. Upon the payment or delivery of abandoned property to the department of revenue, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the department of revenue under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property, excepting as to any property which is returned to the owner pursuant to RCW 63.28.250(2). [1955 c 385 § 14.]

63.28.210 Preservation of records. (1) Every person who has made a report of property and has delivered such property to the department of revenue shall retain for a period of not less than ten years from the date of such delivery all records which would in any way assist in determining the validity of any claim made against the property pursuant to RCW 63.28.250 and 63.28.260, or may deliver such records to the department of revenue (in original form or as reproduced through microfilm or other suitable process, all as designated by the department of revenue) at the time of such delivery of property or at any time within such ten year period. After the lapse of ten years such records may be disposed of, but only by forwarding them to the department of revenue. Such records may be so retained or forwarded either in original form or as reproduced through microfilm, or as reproduced through other suitable process acceptable to the department of revenue. The department of revenue may destroy any of such records as in its opinion are not necessary for the proper determination of any claim filed against the property, and shall retain all other records for a period of not less than seventy-five years, excepting that they may be disposed of at any time prior to seventy-five years if the likeness thereof is preserved by any process, such as microfilming, which would reduce the bulk thereof.

(2) Any person who is required to retain any records relating to abandoned property as provided in this section and who terminates his business prior to the ten-year period provided, shall deliver such records to his successor, or if there be no successor he may forward the records to the department of revenue.

(3) Any person, or his successor or successors, who is holding any records relating to abandoned property as provided in this section, shall forward such records to the department of revenue upon written request. [1955 c 385 § 15.]

63.28.220 Increments denied owner, when. When property is paid or delivered to the department of revenue under this chapter, the owner is not entitled to receive income or other increments accruing thereafter. [1955 c 385 § 16.]

63.28.225 Periods of limitation not a bar. (1) The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the

money or property from being presumed abandoned property, nor affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the department of revenue.

(2) This section applies to all abandoned property subject to this chapter which has not been paid or delivered to the department of revenue on or after September 1, 1979. [1979 1st ex.s. c 117 § 1.]

63.28.230 Sale of abandoned property. (1) All abandoned property other than money delivered to the department of revenue under this chapter shall be sold by the department of revenue at such time and such place and in such manner as in its judgment will bring the highest return. Neither the department of revenue nor any employee thereof shall in any way be held liable to any person for any claimed loss on the sale of such property. The department of revenue may decline the highest bid and reoffer the property for sale if it considers the price bid insufficient. It need not offer any property for sale if, in its opinion, the probable cost of sale exceeds the value of the property.

(2) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale, in an English language newspaper of general circulation in the county where the property is to be sold.

(3) The purchaser at any sale conducted by the department of revenue pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The department of revenue shall execute all documents necessary to complete the transfer of title. [1955 c 385 § 17.]

63.28.240 Disposition of funds—Trust fund. (1) All funds received under this chapter, including the proceeds from the sale of abandoned property under RCW 63.28.230, shall forthwith be remitted by the department of revenue to the state treasurer for deposit in the general fund of the state, except that the department of revenue shall retain in a separate trust fund the sum of one hundred thousand dollars from which it shall make prompt payment of claims allowed as hereinafter provided. All funds received under this chapter after the initial establishment of the said trust fund shall first be used by the department of revenue for replenishing the trust fund. The department of revenue shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, and the name of the corporation. This record shall be available for public inspection at all reasonable business hours.

(2) The department of revenue may pay from the trust fund provided in subsection (1) of this section, any costs of administering this chapter. [1955 c 385 § 18.]

63.28.250 Claims and appeals to department of revenue. (1) Any person claiming an interest in any property

paid or delivered to the department of revenue under this chapter that was not subsequently adjudged under RCW 63.28.280 to be actually abandoned or escheated may make his claim to such property at any time after it is paid to the department of revenue.

(2) Such claim may be made to the person originally holding the property, or to his successor or successors. If such person is satisfied that the claim is valid and that the claimant is the actual and true owner of the property, he shall so certify to the department of revenue by written statement attested by him under oath, or in case of a corporation, by two principal officers, or one principal officer and an authorized employee thereof. The determination of the holder that the claimant is the actual and true owner shall, in the absence of fraud, be binding upon the department of revenue, and upon receipt of the certificate of the holder to this effect, the department of revenue shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold by the department of revenue as provided in RCW 63.28.230, the amount received from such sale to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by such assignment. In the event the person originally holding the property rejects the claim made against him, the claimant may appeal to the department of revenue.

(3) Any claim to property as provided in this section may be filed directly with the department of revenue. Such claim, or any appeal as provided in this section, shall be made on forms prescribed by the department of revenue. The department of revenue shall consider each claim or appeal filed as soon as practicable and approve or reject it in writing. If the claim or appeal is rejected the claimant may demand a hearing thereon, at which the department of revenue shall hear evidence and thereafter issue a written decision. Such decision shall state the substance of the evidence heard, if a transcript is not kept, and shall be a matter of public record.

(4) Upon approval of any claim or appeal by the department of revenue it shall authorize payment of the amount thereof or return of the property to the claimant, or if the property has been sold by the department of revenue, the amount received from such sale. [1955 c 385 § 19.]

63.28.260 Action in superior court. Any person aggrieved by a decision of the department of revenue or as to whose claim the department of revenue has failed to act within ninety days after the filing of the claim, may commence an action in the superior court of Thurston county to establish his claim. The proceeding shall be brought within ninety days after the decision of the department of revenue or within one hundred eighty days from the filing of the claim if the department of revenue fails to act. The action shall be tried de novo. [1955 c 385 § 20.]

63.28.270 Department of revenue may decline to receive property. The department of revenue, after receiving reports of property deemed abandoned pursuant to

this chapter, may decline to receive any property reported which it deems to have a value less than the cost of giving notice and holding sale, or it may if deemed desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. [1955 c 385 § 21.]

63.28.280 Escheat proceedings. With regard to any property paid or delivered to the department of revenue under this chapter, the department of revenue shall institute escheat proceedings whenever it appears that the owner of such property has died and that no other person is entitled to it: *Provided, however,* That this requirement shall not apply where the amount involved is less than two hundred and fifty dollars, except where in the judgment of the department such action would be to the advantage of the state. [1955 c 385 § 22.]

Escheats: Chapter 11.08 RCW.

63.28.290 Examination of records by department of revenue. The department of revenue may at reasonable times and upon reasonable notice examine the records of any person if it has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter. [1955 c 385 § 23.]

63.28.300 Action by department of revenue to compel delivery. If any person refuses to deliver property to the department of revenue as required under this chapter, it may bring an action in the superior court of the county in which such person resides or has his principal place of business to force payment or delivery of such property. [1955 c 385 § 24.]

63.28.310 Failure or refusal to deliver or report to department of revenue—Penalty. (1) Any person who wilfully fails or refuses to make any report required under this chapter may be fined the sum of ten dollars for each day such report is withheld, unless the department of revenue has extended the time for making any such report as provided in RCW 63.28.170(4).

(2) Any person who wilfully refuses to pay or deliver abandoned property to the department of revenue as required under this chapter shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned for not less than five days nor more than six months, or both. [1955 c 385 § 25.]

63.28.320 Rules and regulations. The department of revenue is hereby authorized to make necessary rules and regulations to carry out the provisions of this chapter. [1955 c 385 § 26.]

63.28.330 Limitation on fee for locating reported or delivered property—Penalty. It shall be unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property which he knows has been reported or paid or delivered to the department of revenue pursuant to this chapter, in excess

of five percent of the value thereof returned to such owner. Any person violating this section shall be guilty of a misdemeanor and shall be fined not less than the amount of the fee or charge he has sought or received or contracted for, and not more than ten times such amount, or imprisoned for not more than thirty days, or both. [1955 c 385 § 27.]

63.28.340 Information and records confidential. Any information or records required to be furnished to the department of revenue as provided in this chapter shall be confidential and shall not be disclosed to any person excepting the person who furnished the same to the department of revenue, and excepting as provided in RCW 63.28.180 and 63.28.240, or as may be necessary in the proper administration of this chapter. [1955 c 385 § 28.]

63.28.350 Property abandoned or escheated under laws of another state. This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this chapter. [1955 c 385 § 29.]

Reviser's note: Effective date of this chapter is midnight, June 8, 1955; see preface 1955 session laws.

63.28.360 Chapter not applicable to city, town or port district. The provisions of chapter 63.28 RCW shall not apply to unclaimed property or moneys in the possession of any city, town or port district or a department or agency thereof. [1975 1st ex.s. c 28 § 4; 1959 c 289 § 1.]

Duties of governmental entity acquiring lost property: Chapter 63.21 RCW.

63.28.900 Short title. This chapter may be cited as the uniform disposition of unclaimed property act. [1955 c 385 § 32.]

63.28.910 Construction to secure uniformity. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1955 c 385 § 31.]

63.28.920 Severability—1955 c 385. If any provision of this chapter or if the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [1955 c 385 § 30.]

Chapter 63.32

UNCLAIMED PROPERTY IN HANDS OF CITY POLICE

Sections

63.32.010	Sale authorized.
63.32.020	Notice of sale.
63.32.030	Disposition of proceeds.
63.32.040	Reimbursement to owner.

63.32.010 Sale authorized. Whenever any personal property shall come into the possession of the police authorities of any city in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, and in all other cases for a period of sixty days from the time said property came into the possession of the police department, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said city may at any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided. [1973 1st ex.s. c 44 § 1; 1939 c 148 § 1; 1925 ex.s. c 100 § 1; RRS § 8999-1.]

63.32.020 Notice of sale. Before said personal property shall be sold, if the name and address of the owner thereof be known, at least ten days' notice of such sale shall be given him either personally or by leaving a written notice at his residence or place of doing business with some person of suitable age and discretion then resident or employed therein; or if the name or residence of the owner be not known, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in the official newspaper of said city at least ten days prior to the date fixed for said sale. The notice shall be signed by the chief or other head of the police department of such city. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief or other head of the police department shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1925 ex.s. c 100 § 2; RRS § 8999-2.]

63.32.030 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be paid into the police pension fund of said city if such fund exists; otherwise into the city current expense fund. [1939 c 148 § 2; 1925 ex.s. c 100 § 3; RRS § 8999-3.]

63.32.040 Reimbursement to owner. If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in said police pension fund or the city current expense fund, furnish satisfactory evidence to the police pension fund board or the city treasurer of said city of the ownership of said personal property he or they shall be entitled to receive from said police pension fund or city current expense fund the amount so deposited therein with interest. [1939 c 148 § 3; 1925 ex.s. c 100 § 4; RRS § 899-4.]

Chapter 63.40

UNCLAIMED PROPERTY IN HANDS OF SHERIFF

Sections	
63.40.010	Sale authorized—Exception—Time limitation before sale.
63.40.020	Notice of sale, form, contents—Conduct of sale.
63.40.030	Disposition of proceeds.
63.40.040	Reimbursement to owner.
63.40.050	Uniform disposition of unclaimed property act not applicable.

63.40.010 Sale authorized—Exception—Time limitation before sale. Whenever any personal property, other than vehicles governed by chapter 46.52 RCW, shall come into the possession of the sheriff of any county in connection with the official performance of his duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, and in all other cases for a period of sixty days from the time said property came into the possession of the sheriff's office, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said county sheriff may at any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided. [1973 1st ex.s. c 44 § 4; 1961 c 104 § 1.]

63.40.020 Notice of sale, form, contents—Conduct of sale. Before said personal property shall be sold, if the name and address of the owner thereof be known, at least ten days' notice of such sale shall be given him either personally or by leaving a written notice at his residence or place of doing business with some person of suitable age and discretion then resident or employed therein; or if the name or residence of the owner be not known, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The notice shall be signed by the sheriff or his deputy. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the sheriff or his deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1961 c 104 § 2.]

63.40.030 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keeping of said personal property and the balance, if any, shall be paid into the county current expense fund. [1961 c 104 § 3.]

63.40.040 Reimbursement to owner. If the owner of said personal property so sold, or his legal representative,

shall, at any time within three years after such money shall have been deposited in the county current expense fund, furnish satisfactory evidence to the county treasurer of said county of the ownership of said personal property he or they shall be entitled to receive from said county current expense fund the amount so deposited therein. [1961 c 104 § 4.]

63.40.050 Uniform disposition of unclaimed property act not applicable. The provisions of chapter 63.28 RCW shall not apply to personal property in the possession of the office of county sheriff. [1961 c 104 § 5.]

Chapter 63.44 JOINT TENANCIES

Sections

63.44.010 Joint tenancies in property.

Frauds and swindles—Failure to deliver leased personal property—Requisites for prosecution—Construction: RCW 9.45.062.

Safe deposit repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090(3).

63.44.010 Joint tenancies in property. See chapter 64.28 RCW.

Chapter 63.48 ESCHEAT OF POSTAL SAVINGS SYSTEM ACCOUNTS

Sections

63.48.010 Accounts presumed abandoned and to escheat to state.

63.48.020 Director to request federal records.

63.48.030 Escheat proceedings brought in Thurston county.

63.48.040 Notice to depositors whose accounts are to be escheated.

63.48.050 Copy of judgment presented for payment—Disposition of proceeds.

63.48.060 Indemnification for losses as result of escheat proceedings—Source.

63.48.010 Accounts presumed abandoned and to escheat to state. All postal savings system accounts created by the deposits of persons whose last known addresses are in the state which have not been claimed by the persons entitled thereto before May 1, 1971, are presumed to have been abandoned by their owners and are declared to escheat and become the property of this state. [1971 ex.s. c 68 § 1.]

63.48.020 Director to request federal records. The director of revenue shall request from the bureau of accounts of the United States treasury department records providing the following information: The names of depositors at the post offices of this state whose accounts are unclaimed, their last addresses as shown by the records of the post office department, and the balance in each account. He shall agree to return to the bureau of accounts promptly all account cards showing last addresses in another state. [1971 ex.s. c 68 § 2.]

63.48.030 Escheat proceedings brought in Thurston county. The director of revenue may bring proceedings in the superior court for Thurston county to escheat unclaimed postal savings system accounts held by the United States treasury. A single proceeding may be used to escheat as many accounts as may be available for escheat at one time. [1971 ex.s. c 68 § 3.]

63.48.040 Notice to depositors whose accounts are to be escheated. The director of revenue shall notify depositors whose accounts are to be escheated as follows:

(1) A letter advising that a postal savings system account in the name of the addressee is about to be escheated and setting forth the procedure by which a deposit may be claimed shall be mailed by first class mail to the named depositor at the last address shown on the account records for each account to be escheated having an unpaid principal balance of more than twenty-five dollars.

(2) A general notice of intention to escheat postal savings system accounts shall be published once in each of three successive weeks in one or more newspapers which combine to provide general circulation throughout this state.

(3) A special notice of intention to escheat the unclaimed postal savings system accounts originally deposited in each post office must be published once in each of three successive weeks in a newspaper published in the county in which the post office is located or, if there is none, in a newspaper having general circulation in the county. This notice must list the names of the owners of each unclaimed account to be escheated having a principal balance of three dollars or more. [1971 ex.s. c 68 § 4.]

63.48.050 Copy of judgment presented for payment—Disposition of proceeds. The director of revenue shall present a copy of each final judgment of escheat to the United States treasury department for payment of the principal due and the interest computed under regulations of the United States treasury department. The payment received shall be deposited in the general fund in the state treasury. [1971 ex.s. c 68 § 5.]

63.48.060 Indemnification for losses as result of escheat proceedings—Source. This state shall indemnify the United States for any losses suffered as a result of the escheat of unclaimed postal savings system accounts. The burden of the indemnification falls upon the fund into which the proceeds of the escheated accounts have been paid. [1971 ex.s. c 68 § 6.]

Title 64

REAL PROPERTY AND CONVEYANCES

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- 64.04** **Conveyances.**
 - 64.08** **Acknowledgments.**
 - 64.12** **Waste and trespass.**
 - 64.16** **Alien land law.**
 - 64.20** **Alienation of land by Indians.**
 - 64.24** **Powers of appointment.**
 - 64.28** **Joint tenancies.**
 - 64.32** **Horizontal property regimes act
 (Condominiums).**
- Actions, where commenced:* RCW 4.12.010.
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Adverse possession: Chapter 7.28 RCW.
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Federal areas, acquisition of land by United States: RCW 37.04.010.
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Housing cooperation law: Chapter 35.83 RCW.
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- Legislative, special legislation prohibited:* State Constitution Art. 2 § 28.
- Liens, improving property with nursery stock:* Chapter 60.20 RCW.
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- Limitation of actions:* Chapter 4.16 RCW.
- Limitation on liability of landowners for injuries to recreation users:* RCW 4.24.210.
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- Mortgages and trust receipts:* Title 61 RCW.
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- Nuisances:* Chapters 7.48, 9.66 RCW.
- Partition:* Chapter 7.52 RCW.
- Personal exemptions:* Chapter 6.16 RCW.
- Power of attorney, recording of revocation:* RCW 65.08.130.
- Probate law and procedure:* Title 11 RCW.
- Process against unknown heirs:* RCW 4.28.130.
- Property taxes:* Title 84 RCW.
- Public lands:* Title 79 RCW.
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- Quieting title:* Chapter 7.28 RCW.
- Real estate brokers and salesmen:* Chapter 18.85 RCW.
- Real property, false representation concerning title:* RCW 9.38.020.
- Recording:* Chapters 65.04, 65.08 RCW.
- Registration of land titles (Torrens Act):* Chapter 65.12 RCW.
- Rents and profits constitute real property for purposes of mortgages, trust deeds or assignments:* RCW 7.28.230.
- Residential Landlord-Tenant Act:* Chapter 59.18 RCW.
- Retail installment sales of goods and services:* Chapter 63.14 RCW.
- Separate property:* Chapter 26.16 RCW.
- Tenancies:* Chapter 59.04 RCW.
- The Washington Principal and Income Act:* Chapter 11.104 RCW.
- Unlawful entry and detainer:* Chapter 59.16 RCW.
- Validity of agreement to indemnify against liability for negligence relative to construction or improvement of real property:* RCW 4.24.115.
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Chapter 64.04 CONVEYANCES

Sections

- 64.04.010
 - 64.04.020
 - 64.04.030
 - 64.04.040
 - 64.04.050
 - 64.04.055
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- Conveyances and encumbrances to be by deed.
 - Requisites of a deed.
 - Warranty deed—Form and effect.
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 - Deeds for conveyance of apartments under horizontal property regimes act.
 - Word "heirs" unnecessary.
 - After acquired title follows deed.
 - Purchaser of community real property protected by record title.
 - Private seals abolished.
 - Private seals abolished—Validation.

- 64.04.105 Corporate seals—Effect of absence from instrument.
 64.04.110 Recording.
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 64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by state, political subdivision, or nonprofit nature conservancy corporation—Conveyances.
 64.04.140 Legislative declaration—Solar energy systems—Solar easements authorized.
 64.04.150 Solar easements—Definitions.
 64.04.160 Solar easements—Creation.
 64.04.170 Interference with solar easement—Remedies.

Validating—1929 c 33: "All instruments in writing purporting to convey or encumber real estate situated in this state, or any interest therein, or other instrument in writing required to be acknowledged, heretofore executed and acknowledged according to the provisions of this act are hereby declared legal and valid." [1929 c 33 § 7; RRS § 10563, part.]

Validating—1891 p 178: "In all cases where real estate has been heretofore duly sold by a sheriff in pursuance of law by virtue of an execution or other process, and no deed having been made therefor in the manner required by law to the purchaser therefor [thereof] or other person entitled to the same by the sheriff making the sale, the successor in office of the sheriff making the sale having made a deed of the premises so sold to the purchaser or other person entitled to the same, such deed shall be valid and effectual to convey to the grantee the lands or premises so sold: *Provided*, That this act shall not be construed to affect the equities of third parties in the premises." [1891 p 178 § 1; RRS § 10569.]

Validating—1890 p 89: "All deeds, mortgages or other instruments in writing heretofore executed to convey real estate, or any interest therein, and which have no subscribing witness or witnesses thereto, are hereby cured of such defect and made valid, notwithstanding such omission: *Provided*, Nothing in this act shall be construed to affect vested rights or impair contracts made in good faith between parties prior to the passage of this act: *And provided further*, That nothing in this act shall be construed to give validity to, or in any manner affect, the sale or transfer of real estate made by the territory or state of Washington, or any officer, agent or employee thereof prior to the passage of this act." [1890 p 89 § 1; RRS § 10570.]

Reviser's note: The two sections below were repealed by 1929 c 33 § 15 but are retained for their historical value.

Validating—Code 1881: "All deeds, mortgages, or other instruments in writing, which, prior to the passage of this chapter may have been acknowledged before either of the foregoing named officers, or deputies, or before the clerk of any court, or his deputies, heretofore established by the laws of this territory, are hereby declared legal and valid, in so far as such acknowledgment is concerned." [Code 1881 § 2318; RRS § 10562.]

Validating—Code 1881: "That all deeds, mortgages, and other instruments at any time heretofore acknowledged according to the provisions of this chapter are hereby declared legal and valid." [Code 1881 § 2322; RRS § 10568.]

Recording of deeds and conveyances: Title 65 RCW.

Tax on conveyances: Chapter 82.20 RCW.

64.04.010 Conveyances and encumbrances to be by deed. Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: *Provided*, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore

made in accordance with the provisions of this section are hereby declared to be legal and valid. [1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

64.04.020 Requisites of a deed. Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by *this act to take acknowledgments of deeds. [1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

***Reviser's note:** The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010–64.04.050, 64.08.010–64.08.070, 64.12.020 and 65.08.030.

64.04.030 Warranty deed—Form and effect. Warranty deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of _____, state of Washington. Dated this _____ day of _____, 19__.

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. [1929 c 33 § 9; RRS § 10552. Prior: 1886 p 177 § 3.]

64.04.040 Bargain and sale deed—Form and effect. Bargain and sale deeds for the conveyance of land may be substantially in the following form, without express covenants: The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, bargains, sells and conveys to (here insert the grantee's name or names) the following described real estate (here insert description) situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19__.

Every deed in substance in the above form when otherwise duly executed, shall convey to the grantee, his heirs or assigns an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, free from encumbrances, done or suffered from the grantor, except the

rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns may recover in any action for breaches as if such covenants were expressly inserted. [1929 c 33 § 10; RRS § 10553. Prior: 1886 p 178 § 4.]

64.04.050 Quitclaim deed—Form and effect. Quitclaim deeds may be in substance in the following form: The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19____. Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. [1929 c 33 § 11; RRS § 10554. Prior: 1886 p 178 § 5.]

64.04.055 Deeds for conveyance of apartments under horizontal property regimes act. All deeds for the conveyance of apartments as provided for in chapter 64.32 RCW shall be substantially in the form required by law for the conveyance of any other land or real property and shall in addition thereto contain the contents described in RCW 64.32.120. [1963 c 156 § 29.]

64.04.060 Word "heirs" unnecessary. The term "heirs", or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. All conveyances heretofore made omitting the word "heirs", or other technical words of inheritance, but not limiting the estate conveyed, are hereby validated as and are declared to be conveyances of an estate in fee simple. [1931 c 20 § 1; RRS § 10558. Prior: 1888 p 51 § 4.]

64.04.070 After acquired title follows deed. Whenever any person or persons having sold and conveyed by deed any lands in this state, and who, at the time of such conveyance, had no title to such land, and any person or persons who may hereafter sell and convey by deed any lands in this state, and who shall not at the time of such sale and conveyance have the title to such land, shall acquire a title to such lands so sold and conveyed, such title shall inure to the benefit of the purchasers or conveyee or conveyees of such lands to whom such deed was executed and delivered, and to his and their heirs and assigns forever. And the title to such land so sold and conveyed shall pass to and vest in the conveyee or conveyees of such lands and to his or their heirs and assigns, and shall thereafter run with such land. [1871 p 195 § 1; RRS § 10571. Cf. Code 1881 (Supp.) p 25 § 1.]

64.04.080 Purchaser of community real property protected by record title. See RCW 26.16.095.

64.04.090 Private seals abolished. The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect. [1923 c 23 § 1; RRS § 10556. Prior: 1888 p 184 § 1; 1888 p 50 § 3; 1886 p 165 § 1; 1871 p 83 §§ 1, 2.]

64.04.100 Private seals abolished—Validation. All deeds, mortgages, leases, bonds and other instruments and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, which have heretofore been executed without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid. [1923 c 23 § 2; RRS § 10557. Prior: 1888 p 184 § 2.]

64.04.105 Corporate seals—Effect of absence from instrument. The absence of a corporate seal on any deed, mortgage, lease, bond or other instrument or contract in writing shall not affect its validity, legality or character in any respect. [1957 c 200 § 1.]

64.04.110 Recording. See chapter 65.08 RCW.

64.04.120 Registration of land titles. See chapter 65.12 RCW.

64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by state, political subdivision, or nonprofit nature conservancy corporation—Conveyances. A development right, easement, covenant, restriction, or other right, or any interest less than the fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land, whether the right or interest be appurtenant or in gross, may be held or acquired by any state agency, county, city, town, or metropolitan municipal corporation, or nonprofit nature conservancy corporation. Any such right or interest shall constitute and be classified as real property. All instruments for the conveyance thereof shall be substantially in the form required by law for the conveyance of any land or other real property.

As used in this section, "nonprofit nature conservancy corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) (of the United States Internal Revenue Code of 1954, as amended) as it existed on June 25, 1976, and which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural

resources, including but not limited to biological resources, for the general public; or the conserving of natural areas including but not limited to wildlife or plant habitat. [1979 1st ex.s. c 21 § 1.]

Acquisition of open space, etc., land or rights to future development by counties, cities, metropolitan municipal corporations or nonprofit nature conservancy corporation or association: RCW 84.34.200 through 84.34.250.

64.04.140 Legislative declaration—Solar energy systems—Solar easements authorized. The legislature declares that the potential economic and environmental benefits of solar energy use are considered to be in the public interest; therefore, local governments are authorized to encourage and protect access to direct sunlight for solar energy systems. The legislature further declares that solar easements appropriate to assuring continued access to direct sunlight for solar energy systems may be created and may be privately negotiated. [1979 1st ex.s. c 170 § 1.]

Severability—1979 1st ex.s. c 170: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 1st ex.s. c 170 § 15.] This applies to RCW 35.63.015, 35A.63.015, 36.70.025, 64.04.140, 64.04.150, 64.04.160, 64.04.170, and to the 1979 amendments to RCW 35.63-.060, 35.63.080, 35.63.090, 35A.63.062, 35A.63.100, 36.70.350, and 36.70.560.

64.04.150 Solar easements—Definitions. (1) As used in this chapter:

(a) "Solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (i) The heating or cooling of a structure or building;
 - (ii) The heating or pumping of water;
 - (iii) Industrial, commercial, or agricultural processes;
- or
- (iv) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

(b) "Solar easement" means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

(2) A solar easement is an interest in real property, and shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(3) A solar easement shall be appurtenant and run with the land or lands benefited and burdened, unless otherwise provided in the easement.

(4) Any instrument creating a solar easement shall include but not be limited to:

(a) A description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement; and

(b) A description of the extent of the solar easement which is sufficiently certain to allow the owner of the real property subject to the easement to ascertain the extent of the easement. Such description may be made by describing the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the easement and the points from which those angles are to be measured, or the height over the property above which the solar easement extends, or a prohibited shadow pattern, or any other reasonably certain description.

(5) Any instrument creating a solar easement may include:

(a) The terms or conditions or both under which the solar easement is granted or will be terminated; and

(b) Any provisions for compensation to the owner of property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation to the owner of the property subject to the solar easement for maintaining the solar easement. [1979 1st ex.s. c 170 § 12.]

Severability—1979 1st ex.s. c 170: See note following RCW 64.04.140.

64.04.160 Solar easements—Creation. A solar easement created under this chapter may only be created by written agreement. Nothing in this chapter shall be deemed to create or authorize the creation of an implied easement or a prescriptive easement. [1979 1st ex.s. c 170 § 14.]

Severability—1979 1st ex.s. c 170: See note following RCW 64.04.140.

64.04.170 Interference with solar easement—Remedies. In any action for interference with a solar easement, if the instrument creating the easement does not specify any appropriate and applicable remedies, the court may choose one or more remedies including but not limited to the following:

(1) Actual damages as measured by increased charges for supplemental energy, the capital cost of the solar energy system, and/or the cost of additional equipment necessary to supply sufficient energy:

(a) From the time the interference began until the actual or expected cessation of the interference; or

(b) If the interference is not expected to cease, in a lump sum which represents the present value of the damages from the time the interference began until the normally expected end of the useful life of the equipment which was interfered with;

(2) Reasonable and necessary attorney's fees as fixed by the court; and

(3) An injunction against the interference. [1979 1st ex.s. c 170 § 13.]

Severability—1979 1st ex.s. c 170: See note following RCW 64.04.140.

Chapter 64.08
ACKNOWLEDGMENTS

Sections

- 64.08.010 Who may take acknowledgments.
64.08.020 Acknowledgments out of state—Certificate.
64.08.040 Foreign acknowledgments, who may take.
64.08.050 Certificate of acknowledgment—Evidence.
64.08.060 Form of certificate for individual.
64.08.070 Form of certificate for corporation.
64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.

Validating: See notes following chapter 64.04 RCW digest.

Acknowledgments, merchant seamen: RCW 73.20.010.

Acknowledgments, persons in the armed services: RCW 73.20.010.

Acknowledgments, persons outside United States in connection with war: RCW 73.20.010.

64.08.010 Who may take acknowledgments. Acknowledgments of deeds, mortgages and other instruments in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the court of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged according to the provisions of this section are hereby declared legal and valid.

64.08.020 Acknowledgments out of state—Certificate. Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein, and other instruments in writing, required to be acknowledged, may be taken in any other state or territory of the United States, the District of Columbia, or in any possession of the United States, before any person authorized to take the acknowledgments of deeds by the laws of the state, territory, district or possession wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this state, for that purpose, but unless such acknowledgment is taken before a commissioner so appointed by the governor, or before the clerk of a court of record of such state, territory, district or possession, or before a notary public or other officer having a seal of office, the instrument shall have attached thereto a certificate of the clerk of a court of record of the county, parish, or other political subdivision of such state, territory, district or possession wherein the acknowledgment was taken, under the seal of said court, certifying that the person who took the acknowledgment, and whose name is subscribed to the certificate thereof, was at the date thereof such officer as he represented himself to be, authorized by law to take acknowledgments of deeds, and that the clerk verily

believes the signature of the person subscribed to the certificate of acknowledgment to be genuine. [1929 c 33 § 4; RRS §§ 10560, 10561. Prior: Code 1881 §§ 2316, 2317; 1877 p 313 §§ 6, 7; 1873 p 466 §§ 6, 7; 1867 pp 93, 94 §§ 1, 2; 1866 p 89 § 1; 1865 p 25 § 1. Formerly RCW 64.08.020 and 64.08.030.]

64.08.040 Foreign acknowledgments, who may take. Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein and other instruments in writing, required to be acknowledged, may be taken in any foreign country before any minister, plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the United States government, or before any notary public, or before the judge, clerk, or other proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein. [1929 c 33 § 5; RRS § 10563, part. Prior: 1901 c 53 § 1; 1888 p 1 § 1; Code 1881 § 2319; 1875 p 108 § 2.]

64.08.050 Certificate of acknowledgment—Evidence. The officer, or person, taking an acknowledgment as in this act provided, shall certify the same by a certificate written upon or annexed to the instrument acknowledged and signed by him and sealed with his official seal, if any he has, and reciting in substance that the person, or persons, known to him as the person, or persons, whose name, or names, are signed to the instrument as executing the same, acknowledged before him that he or they, executed the same freely and voluntarily, on the date stated in the certificate. Such certificate shall be prima facie evidence of the facts therein recited. [1929 c 33 § 6; RRS §§ 10564, 10565. Prior: Code 1881 §§ 2320, 2321; 1879 p 158 §§ 2, 3.]

*Reviser's note: "this act", see note following RCW 64.04.020.

64.08.060 Form of certificate for individual. A certificate of acknowledgment, substantially in the following form shall be sufficient:

State of ----- }
County of ----- } ss.

On this day personally appeared before me (here insert the name of grantor or grantors) to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he (she or they) signed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this ----- day of -----, 19... (Signature of officer and official seal)

If acknowledgment is taken before a notary public of this state the signature shall be followed by substantially the following: Notary Public in and for the state of Washington, residing at -----, (giving place of residence). [1929 c 33 § 13; RRS § 10566. Prior: 1888 p 51 § 2; 1886 p 179 § 7.]

64.08.070 Form of certificate for corporation. Certificates of acknowledgment of an instrument acknowledged by a corporation shall be in substantially the following form:

State of ----- }
County of ----- } ss.

On this ----- day of -----, 19--., before me personally appeared -----, to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written. (Signature and title of officer with place of residence of notary public.) [1929 c 33 § 14; RRS § 10567. Prior: 1903 c 132 § 1.]

64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure. The superintendents, associate and assistant superintendents, business managers, records officers and camp superintendents of any correctional institution or facility operated by the state of Washington are hereby authorized and empowered to take acknowledgments on any instruments of writing, and certify the same in the manner required by law, and to administer all oaths required by law to be administered, all of the foregoing acts to have the same effect as if performed by a notary public: *Provided*, That such authority shall only extend to taking acknowledgments for and administering oaths to officers, employees and residents of such institutions and facilities. None of the individuals herein empowered to take acknowledgments and administer oaths shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or acknowledgment under the authority conferred by this section.

In certifying any oath or in signing any instrument officially, an individual empowered to do so under this section shall, in addition to his name, state in writing his place of residence, the date of his action, and affix the seal of the institution where he is employed: *Provided*, That in certifying any oath to be used in any of the courts of this state, it shall not be necessary to append an impression of the official seal of the institution. [1972 ex.s. c 58 § 1.]

Chapter 64.12

WASTE AND TRESPASS

Sections

64.12.010 Waste actionable.
64.12.020 Waste by guardian or tenant, action for.

64.12.030 Injury to or removing trees, etc.—Damages.
64.12.040 Mitigating circumstances—Damages.
64.12.045 Cutting, breaking, removing Christmas trees from state lands—Compensation.
64.12.050 Injunction to prevent waste on public land.
64.12.060 Action by occupant of unsurveyed land.

Actions to be commenced where subject is situated: RCW 4.12.010.

Damages for waste after injunction issued: RCW 7.40.200.

Injunctions, generally: Chapter 7.40 RCW.

Property, joinder of causes of actions: RCW 4.36.150.

Trespass

animals: Title 16 RCW.

criminal: Chapter 9A.16 RCW.

public lands: Chapter 79.40 RCW.

waste, executor or administrator may sue: RCW 11.48.010.

Waste, option contracts and coal leases on state lands: RCW 78.24.120.

Waste, restraining during redemption period: RCW 6.24.200.

Waste, trespass on state lands: Chapter 79.40 RCW.

64.12.010 Waste actionable. Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs. [Code 1881 § 600; 1877 p 125 § 605; 1869 p 143 § 554; 1854 p 206 § 403; RRS § 937.]

64.12.020 Waste by guardian or tenant, action for. If a guardian, tenant in severalty or in common, for life or for years, or by sufferance, or at will, or a subtenant, of real property commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant or subtenant; in which action, if the plaintiff prevails, there shall be judgment for treble damages, or for fifty dollars, whichever is greater, and the court, in addition may decree forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. The judgment, in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice. [1943 c 22 § 1; Code 1881 § 601; 1877 p 125 § 606; 1869 p 143 § 555; 1854 p 206 § 403; Rem. Supp. 1943 § 938.]

64.12.030 Injury to or removing trees, etc.—Damages. Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway in front of any person's house, village, town or city lot, or cultivated grounds, or on the commons or public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town or city against the person committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be. [Code 1881 § 602; 1877 p 125 § 607; 1869 p 143 § 556; RRS § 939.]

Trespass, public lands: Chapter 79.40 RCW.

64.12.040 Mitigating circumstances—Damages. If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages. [Code 1881 § 603; 1877 p 125 § 608; 1869 p 143 § 557; RRS § 940.]

64.12.045 Cutting, breaking, removing Christmas trees from state lands—Compensation. See RCW 79.40.070.

64.12.050 Injunction to prevent waste on public land. When any two or more persons are opposing claimants under the laws of the United States to any land in this state, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders. [Code 1881 § 604; 1877 p 125 § 609; 1869 p 144 § 558; 1854 p 206 § 404; RRS § 941.]

Injunction, generally: Chapter 7.40 RCW.

64.12.060 Action by occupant of unsurveyed land. Any person now occupying and settled upon, or who may hereafter occupy or settle upon any of the unsurveyed public lands not to exceed one hundred sixty acres in this territory, for the purpose of holding and cultivating the same, may commence and maintain any action, in any court of competent jurisdiction, for interference with or injuries done to his or her possessions of said lands, against any person or persons so interfering with or injuring such lands or possessions: *Provided, always,* That if any of the aforesaid class of settlers are absent from their claims continuously, for a period of six months in any one year, the said person or persons shall be deemed to have forfeited all rights under this act. [1883 p 70 § 1; RRS § 942.]

Reviser's note: The preamble and sections 2 and 3 of the 1883 act, section 1 of which is codified above as RCW 64.12.060, read as follows:

Preamble: "WHEREAS, A great many citizens of the United States are now settling upon and cultivating the unsurveyed government lands in this territory; and, as many years may elapse before the government surveys will be extended over the said lands, so that the settlers upon the same, can take them under the laws of the United States, and defend them against the trespass of others, therefore:"

"Sec. 2. Any person or persons, who shall wilfully and maliciously disturb, or in any wise injure, or destroy the dwelling house or other building, or any fence inclosing, or being on the claim of any of the aforesaid class of settlers, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more

than one hundred (\$100) dollars, for each and every offense, to which may be added imprisonment in the county jail, not exceeding ninety (90) days." [1883 p 71 § 2.]

"Sec. 3. Any person or persons, who shall wilfully or maliciously set fire to any dwelling, or other building, of any of the aforesaid class of settlers, shall be deemed guilty of arson, and subject to the penalties of the law in such cases, made and provided." [1883 p 71 § 3.]

Chapter 64.16 ALIEN LAND LAW

Sections

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| 64.16.005 | Aliens' rights and interests in lands same as native citizens'. |
| 64.16.140 | Certain titles confirmed. |

64.16.005 Aliens' rights and interests in lands same as native citizens'. Any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise or descent; and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs, and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of this state or of the United States. [1967 c 163 § 2.]

1967 c 163 adopted to implement Amendment 42: "This act is adopted by the legislature to implement amendment 42 to the state Constitution approved by the voters of the state on November 8, 1966. Amendment 42 removed constitutional restrictions against alien ownership of land by repealing Article II, section 33 of the state Constitution, as amended and Amendments 24 and 29." [1967 c 163 § 1.]

Severability—1967 c 163: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 163 § 9.]

The foregoing annotations apply to RCW 64.16.005, 64.16.140, the repeal of RCW 64.16.010 through 64.16.130 and 64.16.150, RCW 79.01.088, 79.01.572, 79.14.010 and the repeal of RCW 79.01.614.

64.16.140 Certain titles confirmed. All lands and all estates or interests in lands, within the state of Washington, which were conveyed or attempted to be conveyed to, or acquired or attempted to be acquired by, any alien or aliens, prior to the date of the adoption of this act, are hereby confirmed to the respective persons at present owning or claiming to own the title thereto derived by, through or under any such alien ownership or attempted ownership, to the extent that title was vested in or conveyed by said alien or aliens: *Provided,* That nothing in this section shall be construed to affect, adversely or otherwise, any title to any such lands, or to any interest or estate therein, held or claimed by any private person or corporation adversely to the title hereby confirmed. [1967 c 163 § 3; 1895 c 111 § 1; RRS § 10589.]

Reviser's note: 1967 c 163 carried an emergency clause and was approved by the governor on March 21, 1967.

Chapter 64.20 ALIENATION OF LAND BY INDIANS

Sections

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|-----------|---------------------------------------|
| 64.20.010 | Puyallup Indians—Right of alienation. |
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- 64.20.025 Puyallup Indians—Right of alienation—When effective.
 64.20.030 Sale of land or materials authorized.

Indian graves and records: Chapter 27.44 RCW.

Indians and Indian lands, jurisdiction: Chapter 37.12 RCW.

64.20.010 Puyallup Indians—Right of alienation.

The said Indians who now hold, or who may hereafter hold, any of the lands of any reservation, in severalty, located in this state by virtue of treaties made between them and the United States, shall have power to lease, incumber, grant and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions in reference thereto are hereby removed. [1890 p 500 § 1; RRS § 10593.]

Preamble: *WHEREAS, It was and is provided by and in the treaty made with and between the chiefs, head men and delegates of the Indian tribes (including the Puyallup tribe) and the United States of America, which treaty is dated on the 26th day of December, 1854, among other things as follows: 'That the president, at his discretion, should cause the whole or any portion of the lands thereby reserved, or such land as might be selected in lieu thereof, to be surveyed into lots and assign the same to such individuals or families as are willing to avail themselves of the privilege and will locate on the same as a permanent home, on the same terms, and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable; and

'WHEREAS, It was and is provided by and in the sixth article of the treaty with the Omahas aforesaid, among other things, that said tracts of land shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a state constitution embracing such lands within its boundaries shall have been formed, and the legislature of the state shall remove the restrictions, but providing that no state legislature shall remove the restrictions * * * without the consent of the Congress;'

and
 'WHEREAS, The President of the United States, on the 30th day of January, 1866, made and issued patents to the Puyallup Indians, in severalty, for the lands of said reservation, which are now of record in the proper office in Pierce county, in the State of Washington; and

'WHEREAS, All the conditions now exist which said treaties contain, and which make it desirable and proper to remove the restrictions in respect to the alienation and disposition of said lands by the Indians, who now hold them in severalty: now, therefore,'

64.20.025 Puyallup Indians—Right of alienation—When effective. *This act shall take effect and be in force from and after the consent to such removal of the restrictions shall have been given by the congress of the United States. [1890 p 501 § 3; no RRS.]

Reviser's note: *(1) The language "This act" appears in 1890 p 501 § 3, which act is codified herein as RCW 64.20.010 through 64.20.025.

(2) An act of congress of March 3, 1893, removed the restriction on transfer (Wilson Act, 27 Stat. p 633) but postponed the right to transfer for ten years, that is, until March 3, 1903.

64.20.030 Sale of land or materials authorized. Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of congress, either special or general, sell and convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this section to remove

from Indians residing in this state all existing disabilities relating to alienation of their real estate. [1899 c 96 § 1; RRS § 10595.]

Chapter 64.24

POWERS OF APPOINTMENT

Sections

64.24.010	Releases.
64.24.020	Releases—Partial releases.
64.24.030	Releases—Form and substance—Delivery.
64.24.040	Releases—Effect on prior releases.
64.24.050	Releases—Filing with secretary of state—Fee.

Duration of trusts for employee benefits: Chapter 49.64 RCW.

64.24.010 Releases. Any power, which is exercisable by deed, by will, by deed or will, or otherwise, whether general or special, other than a power in trust which is imperative, is releasable, either with or without consideration, by written instrument signed by the holder thereof and delivered as hereinafter provided, unless the instrument creating the power provides otherwise. [1955 c 160 § 1.]

64.24.020 Releases—Partial releases. A power which is releasable may be released with respect to the whole or any part of the property subject to such power and may also be released in such manner as to reduce or limit the persons or objects, or classes or [of] persons or objects, in whose favor such powers would otherwise be exercisable. No release of a power shall be deemed to make imperative a power which was not imperative prior to such release, unless the instrument of release expressly so provides. [1955 c 160 § 2.]

64.24.030 Releases—Form and substance—Delivery. In order to be effective as a release of a power, the instrument of release must, as to form and substance, comply with the requirements therefor, if any, set forth in the instrument creating the power, and must be delivered to the person or persons designated in any one or more of the following:

- (1) Each person specified for such purpose in the instrument creating the power; and
- (2) Any trustee or cotrustee of the property to which the power relates; and
- (3) The office of the secretary of state, and such delivery shall from the time thereof constitute notice of such release to all persons other than those specified in subdivisions (1) and (2) above. [1955 c 160 § 3.]

64.24.040 Releases—Effect on prior releases. The enactment of RCW 64.24.010 through 64.24.050 shall not be construed to impair the validity of any release heretofore made which was otherwise valid when executed. [1955 c 160 § 4.]

64.24.050 Releases—Filing with secretary of state—Fee. It shall be the duty of the secretary of state to mark each instrument of release filed in his office with a consecutive file number and with the date and hour of filing, and to note and index the filing in a

suitable alphabetical index according to the name or names of the person or persons signing the same and containing a notation of the address or addresses of the signer or signers, if given in the instrument. The fee for filing is one dollar. The secretary of state shall deliver or mail to the person filing the instrument a receipt showing the filing number and date and hour of filing. [1955 c 160 § 5.]

Chapter 64.28 JOINT TENANCIES

Sections	
64.28.010	Joint tenancies with right of survivorship authorized—Methods of creation—Creditors rights saved.
64.28.020	Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, community property, trustees, etc.
64.28.030	Bank deposits, choses in action, community property agreements not affected.

Safe deposit repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090(3).

64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors rights saved. Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law. Joint tenancy shall be created only by written instrument, which instrument shall expressly declare the interest created to be a joint tenancy. It may be created by a single agreement, transfer, deed, will, or other instrument of conveyance, or by agreement, transfer, deed or other instrument from a sole owner to himself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from husband and wife, when holding title as community property, or otherwise, to themselves or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as joint tenants: *Provided*, That such transfer shall not derogate from the rights of creditors. [1963 ex.s. c 16 § 1; 1961 c 2 § 1.]

64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, community property, trustees, etc. Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010, or unless acquired as community property or unless acquired by executors or trustees. [1961 c 2 § 2.]

64.28.030 Bank deposits, choses in action, community property agreements not affected. The provisions of this chapter shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as

heretofore or hereafter provided by law, nor restrict the power of husband and wife to make agreements as provided in RCW 26.16.120. [1961 c 2 § 3.]

Chapter 64.32 HORIZONTAL PROPERTY REGIMES ACT (CONDOMINIUMS)

Sections	
64.32.010	Definitions.
64.32.020	Application of chapter.
64.32.030	Apartments and common areas declared real property.
64.32.040	Ownership and possession of apartments and common areas.
64.32.050	Common areas and facilities.
64.32.060	Compliance with covenants, bylaws and administrative rules and regulations.
64.32.070	Liens or encumbrances—Enforcement—Satisfaction.
64.32.080	Common profits and expenses.
64.32.090	Contents of declaration.
64.32.100	Copy of survey map, building plans to be filed—Contents of plans.
64.32.110	Ordinances, resolutions, or zoning laws—Construction.
64.32.120	Contents of deeds or other conveyances of apartments.
64.32.130	Mortgages, liens or encumbrances affecting an apartment at time of first conveyance.
64.32.140	Recording.
64.32.150	Removal of property from provisions of chapter.
64.32.160	Removal of property from provisions of chapter—No bar to subsequent resubmission.
64.32.170	Records and books—Availability for examination—Audits.
64.32.180	Exemption from liability for contribution for common expenses prohibited.
64.32.190	Separate assessments and taxation.
64.32.200	Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser.
64.32.210	Conveyance—Liability of grantor and grantee for unpaid common expenses.
64.32.220	Insurance.
64.32.230	Destruction or damage to all or part of property—Disposition.
64.32.240	Actions.
64.32.250	Application of chapter, declaration and bylaws.
64.32.900	Short title.
64.32.910	Construction of term "this chapter".
64.32.920	Severability—1963 c 156.

Conversion of apartments into condominiums, notice required: RCW 59.18.200.

Mutual savings banks, powers as to condominiums: RCW 32.04.025.

64.32.010 Definitions. As used in this chapter unless the context otherwise requires:

(1) "Apartment" means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, regardless of whether it is destined for a residence, an office, the operation of any industry or business, or for any other use not prohibited by law, and which has a direct exit to a public street or highway, or to a common area leading to such street or highway. The boundaries of an apartment are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so

described and the air space so encompassed. In interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment as originally constructed or as reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building.

(2) "Apartment owner" means the person or persons owning an apartment, as herein defined, in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, together with an undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the declaration as duly recorded or as it may be lawfully amended.

(3) "Apartment number" means the number, letter, or combination thereof, designating the apartment in the declaration as duly recorded or as it may be lawfully amended.

(4) "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and with the declaration as it is duly recorded or as they may be lawfully amended.

(5) "Building" means a building, containing two or more apartments, or two or more buildings each containing one or more apartments, and comprising a part of the property.

(6) "Common areas and facilities", unless otherwise provided in the declaration as duly recorded or as it may be lawfully amended, includes: (a) The land on which the building is located;

(b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbys, stairs, stairways, fire escapes, and entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and storage spaces;

(d) The premises for the lodging of janitors or persons in charge of the property;

(e) The installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(f) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(g) Such community and commercial facilities as may be provided for in the declaration as duly recorded or as it may be lawfully amended;

(h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Common expenses" include: (a) All sums lawfully assessed against the apartment owners by the association of apartment owners;

(b) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(c) Expenses agreed upon as common expenses by the association of apartment owners;

(d) Expenses declared common expenses by the provisions of this chapter, or by the declaration as it is duly recorded, or by the bylaws, or as they may be lawfully amended.

(8) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(9) "Declaration" means the instrument by which the property is submitted to provisions of this chapter, as hereinafter provided, and as it may be, from time to time, lawfully amended.

(10) "Land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of the airspace granted, by the laws of this state or of the United States.

(11) "Limited common areas and facilities" includes those common areas and facilities designated in the declaration, as it is duly recorded or as it may be lawfully amended, as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(12) "Majority" or "majority of apartment owners" means the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes.

(13) "Person" includes any individual, corporation, partnership, association, trustee, or other legal entity.

(14) "Property" means the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this chapter. [1965 ex.s. c 11 § 1; 1963 c 156 § 1.]

64.32.020 Application of chapter. This chapter shall be applicable only to property, the sole owner or all of the owners, lessees or possessors of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided. [1963 c 156 § 2.]

64.32.030 Apartments and common areas declared real property. Each apartment, together with its undivided interest in the common areas and facilities shall not be considered as an intangible or a security or any interest therein but shall for all purposes constitute and be classified as real property. [1963 c 156 § 3.]

64.32.040 Ownership and possession of apartments and common areas. Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment but any apartment may be jointly or commonly owned by more than one person. Each apartment owner shall have the common right to a share, with other apartment owners, in the common areas and facilities. [1963 c 156 § 4.]

64.32.050 Common areas and facilities. (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered except in accordance with procedures set forth in the bylaws and by amending the declaration. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains even though such interest is not expressly mentioned or described in the conveyance or other instrument. Nothing in this section or this chapter shall be construed to detract from or limit the powers and duties of any assessing or taxing unit or official which is otherwise granted or imposed by law, rule, or regulation.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this chapter as provided in RCW 64.32.150 and 64.32.230. Any covenant to the contrary shall be void. Nothing in this chapter shall be construed as a limitation on the right of partition by joint owners or owners in common of one or more apartments as to the ownership of such apartment or apartments.

(4) Each apartment owner shall have a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition or improvement thereto shall be carried out only as provided in this chapter and in the bylaws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments. [1965 ex.s. c 11 § 2; 1963 c 156 § 5.]

64.32.060 Compliance with covenants, bylaws and administrative rules and regulations. Each apartment owner shall comply strictly with the bylaws and with the

administrative rules and regulations adopted pursuant thereto, as either may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his apartment. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or by a particularly aggrieved apartment owner. [1963 c 156 § 6.]

64.32.070 Liens or encumbrances—Enforcement—Satisfaction. (1) Subsequent to recording the declaration as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period, liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities and appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership: *Provided*, That no labor performed or materials furnished with the consent of or at the request of the owner of any apartment, or such owner's agent, contractor, or subcontractor, shall be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by any apartment owner in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of apartment owners, the manager or board of directors shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien against each of the apartments and shall be subject to the provisions of subsection (2) of this section.

(2) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge, or satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied, or discharged. [1963 c 156 § 7.]

64.32.080 Common profits and expenses. The common profits of the property shall be distributed among,

and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities. [1963 c 156 § 8.]

64.32.090 Contents of declaration. The declaration shall contain the following:

(1) A description of the land on which the building and improvement are or are to be located;

(2) A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed;

(3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;

(4) A description of the common areas and facilities;

(5) A description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;

(6) The value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting;

(7) A statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

(8) The name of a person to receive service of process in the cases provided for in this chapter, together with a residence or place of business of such person which shall be within the county in which the building is located;

(9) A provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in event of damage or destruction of all or part of the property;

(10) A provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description;

(11) A provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter, which may include whether administration of the property shall be by a board of directors elected from among the apartment owners, by a manager, or managing agent, or otherwise, and the procedures for the adoption thereof and amendments thereto;

(12) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter; and

(13) The method by which the declaration may be amended, consistent with this chapter: *Provided*, That not less than sixty percent of the apartment owners shall consent to any amendment except that any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common

areas and facilities shall require the unanimous consent of the apartment owners. [1963 c 156 § 9.]

64.32.100 Copy of survey map, building plans to be filed—Contents of plans. Simultaneously with the recording of the declaration there shall be filed in the office of the county auditor of the county in which the property is located a survey map of the surface of the land submitted to the provisions of this chapter showing the location or proposed location of the building or buildings thereon.

There also shall be filed simultaneously, a set of plans of the building or buildings showing as to each apartment:

(a) the vertical and horizontal boundaries, as defined in RCW 64.32.010(1), in sufficient detail to identify and locate such boundaries relative to the survey map of the surface of the land by the use of standard survey methods; and

(b) the number of the apartment and its dimensions.

The set of plans shall bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor certifying that the plans accurately depict the location and dimensions of the apartments as built.

If such plans do not include such verified statement there shall be recorded prior to the first conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the apartment numbers, dimensions, and locations of the apartments as built.

Such plans shall each contain a reference to the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration. Correspondingly, the record of the declaration or amendment thereof shall contain a reference to the file number of the plans of the building affected thereby.

All plans filed shall be in such style, size, form and quality as shall be prescribed by the county auditor of the county where filed, and a copy shall be delivered to the county assessor. [1965 ex.s. c 11 § 3; 1963 c 156 § 10.]

64.32.110 Ordinances, resolutions, or zoning laws—Construction. Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of apartments under this chapter rather than by lease of apartments. [1963 c 156 § 11.]

64.32.120 Contents of deeds or other conveyances of apartments. Deeds or other conveyances of apartments shall include the following:

(1) A description of the land as provided in RCW 64.32.090, or the post office address of the property, including in either case the date of recording of the

declaration and the volume, page and county auditor's receiving number of the recorded declaration;

(2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification;

(3) A statement of the use for which the apartment is intended;

(4) The percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining thereto, if any;

(5) Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and with this chapter. [1965 ex.s. c 11 § 4; 1963 c 156 § 12.]

64.32.130 Mortgages, liens or encumbrances affecting an apartment at time of first conveyance. At the time of the first conveyance of each apartment, every mortgage, lien, or other encumbrance affecting such apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released therefrom by partial release duly recorded. [1963 c 156 § 13.]

64.32.140 Recording. The declaration, any amendment thereto, any instrument by which the property may be removed from this chapter and every instrument affecting the property or any apartment shall be entitled to be recorded in the office of the auditor of the county in which the property is located. Neither the declaration nor any amendment thereof shall be valid unless duly recorded [1963 c 156 § 14.]

64.32.150 Removal of property from provisions of chapter. (1) All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect duly recorded: *Provided*, That the mortgagees and holders of all liens affecting any of the apartments consent thereto or agree, in either case by instrument duly recorded, that their mortgages and liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided;

(2) Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owners in the common areas and facilities. [1963 c 156 § 15.]

64.32.160 Removal of property from provisions of chapter—No bar to subsequent resubmission. The removal provided for in RCW 64.32.150 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter. [1963 c 156 § 16.]

64.32.170 Records and books—Availability for examination—Audits. The manager or board of directors, as the case may be, shall keep complete and accurate books and records of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such books and records and the vouchers authorizing payments shall be available for examination by the apartment owners, their agents or attorneys, at any reasonable time or times. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization. [1965 ex.s. c 11 § 5; 1963 c 156 § 17.]

64.32.180 Exemption from liability for contribution for common expenses prohibited. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment. [1963 c 156 § 18.]

64.32.190 Separate assessments and taxation. Each apartment and its undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, nor the property, nor any of the common areas and facilities shall be deemed to be a security or a parcel for any purpose. [1963 c 156 § 19.]

64.32.200 Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser. (1) The declaration may provide for the collection of all sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment and the collection may be enforced in any manner provided in the declaration including but not limited to (a) ten days notice shall be given the delinquent apartment owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid, or (b) collection of such assessment may be made by such lawful method of enforcement, judicial or extra-judicial, as may be provided in the declaration and/or bylaws.

(2) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) all sums unpaid on all mortgages of record. Such lien may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the

plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment, the period of redemption shall be eight months after the sale. Suit to recover any judgment for any unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same.

(3) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains possession of the apartment as a result of foreclosure of the mortgage, such possessor, his successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to such apartment which became due prior to such possession. Such unpaid share of common expenses of assessments shall be deemed to be common expenses collectible from all of the apartment owners including such possessor, his successors and assigns. [1965 ex.s. c 11 § 6; 1963 c 156 § 20.]

64.32.210 Conveyance—Liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. [1963 c 156 § 21.]

64.32.220 Insurance. The manager or board of directors, if required by the declaration, bylaws, or by a majority of the apartment owners, or at the request of a mortgagee having a mortgage of record covering an apartment, shall obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of the manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment and/or the personal contents thereof for his benefit. [1963 c 156 § 22.]

64.32.230 Destruction or damage to all or part of property—Disposition. If, within ninety days of the

date of damage or destruction to all or part of the property it is not determined by the apartment owners to repair, reconstruct, or rebuild in accordance with the original plan, or by a unanimous vote of all apartment owners to do otherwise, then and in that event:

(1) The property shall be owned in common by the apartment owners;

(2) The undivided interest in the property owned in common which appertains to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(3) Any mortgages or liens affecting any of the apartments shall be deemed transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

(4) The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance of the property, if any, shall be considered as one fund; such fund shall be divided into separate shares one for each apartment owner in a percentage equal to the percentage of undivided interest owned by each such owner in the property; then, after first paying out of the respective share of each apartment owner, to the extent sufficient for the purpose, all mortgages and liens on the undivided interest in the property owned by such apartment owner, the balance remaining in each share shall then be distributed to each apartment owner respectively. [1965 ex.s. c 11 § 7; 1963 c 156 § 23.]

64.32.240 Actions. Without limiting the rights of any apartment owner, actions may be brought as provided by law and by the rules of court by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the declaration to receive service of process. Actions relating to the common areas and facilities for damages arising out of tortious conduct shall be maintained only against the association of apartment owners and any judgment lien or other charge resulting therefrom shall be deemed a common expense, which judgment lien or other charge shall be removed from any apartment and its percentage of undivided interest in the common areas and facilities upon payment by the respective owner of his proportionate share thereof based on the percentage of undivided interest owned by such apartment owner. [1963 c 156 § 24.]

64.32.250 Application of chapter, declaration and bylaws. (1) All apartment owners, tenants of such owners, employees of such owners and tenants, and any other person that may in any manner use the property or any part thereof submitted to the provisions of this

chapter, shall be subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this chapter.

(2) All agreements, decisions and determinations made by the association of apartment owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established in this chapter, the declaration, or the bylaws, shall be deemed to be binding on all apartment owners. [1963 c 156 § 25.]

64.32.900 Short title. This chapter shall be known as the horizontal property regimes act. [1963 c 156 § 26.]

64.32.910 Construction of term "this chapter". The term "this chapter" means RCW 64.32.010 through 64.32.250 and 64.32.900 through 64.32.920, and as they may hereafter be amended or supplemented by subsequent legislation. [1963 c 156 § 27.]

64.32.920 Severability—1963 c 156. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1963 c 156 § 28.]

Title 65

RECORDING, REGISTRATION, AND LEGAL PUBLICATION

Chapters

- 65.04** Duties of county auditor.
- 65.08** Recording.
- 65.12** Registration of land titles (Torrens Act).
- 65.16** Legal publications.

Assessor's plats: Chapter 58.18 RCW.
Assignment, satisfaction of mortgages: Chapter 61.16 RCW.
Civil procedure, legal publication generally: Chapter 4.28 RCW.
Claim of spouse in community property to be filed: RCW 26.16.100.
Community property, purchaser protected by record title: RCW 26.16.095.
Copies of recorded instruments as evidence: Chapter 5.44 RCW.
Corporate seals, effect of absence from instrument: RCW 64.04.105.
County auditor: Chapter 36.22 RCW.
Eminent domain by corporations, judgment or decree: RCW 8.20.090.
Eminent domain by county, decree: RCW 8.08.060.
Eminent domain by school districts, decree: RCW 8.16.110.
Eminent domain by state, judgment or decree: RCW 8.04.120.
Eminent domain, state lands, decree: RCW 8.28.010.
Fees of county officers: Chapter 36.18 RCW.
Field notes of irregular subdivided tracts: RCW 84.40.170.
Filing reports, claims, tax returns, etc.: RCW 1.12.070.
Lis pendens, effect of filing: RCW 4.28.320.
Notice of proposed constitutional amendments, publication of: RCW 29.27.072, 29.27.074.
Plats: Chapter 58.08 RCW, RCW 84.40.170.
Powers of appointment: Chapter 64.24 RCW.
Railroad contracts, equipment: RCW 81.36.140-81.36.160.
RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.
Retail installment sales of goods and services: Chapter 63.14 RCW.
Secretary of state, duties: RCW 43.07.030.
Seed liens: RCW 60.12.190.

Chapter 65.04

DUTIES OF COUNTY AUDITOR

Sections

- 65.04.020** Duty to provide and keep records.
- 65.04.030** Instruments to be recorded or filed.
- 65.04.040** Photographic, microfilm, etc., recordation of instruments—Marginal notations—Arrangement of records.
- 65.04.050** Record of instruments, how made and kept.
- 65.04.060** Record when lien is discharged.
- 65.04.070** Recording judgments affecting real property.
- 65.04.080** Entries when instruments offered for record.
- 65.04.090** Further endorsements—Delivery.
- 65.04.100** Data to be furnished upon request.
- 65.04.110** Liability of auditor for damages.
- 65.04.115** Names on documents, etc., to be printed or typewritten—Indexing.
- 65.04.130** Fees to be paid or tendered.
- 65.04.140** Auditor as custodian of records.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

County auditor: Chapter 36.22 RCW.

Fees of county officers, generally: Chapter 36.18 RCW.

Powers of appointment: Chapter 64.24 RCW.

65.04.020 Duty to provide and keep records. For the purpose of recording deeds and other instruments of writing, required or permitted by law to be recorded, the county auditor shall procure such books for records as the business of the office requires. He has the custody of and must keep at all times in his office all books, records, maps and papers deposited with him as such officer. [1893 c 119 § 10; Code 1881 § 2726; RRS § 10600.]

65.04.030 Instruments to be recorded or filed. He must, upon the payment of his fees for the same, acknowledge receipt therefor in writing or printed form and record in large and well bound books, or by photographic or photomechanical process, the following:

(1) Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, instruments or agreements relating to community or separate property, powers of attorney to convey real estate, and leases which have been acknowledged or proved: *Provided*, That deeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record;

(2) Patents to lands and receivers' receipts, whether for mineral, timber, homestead or preemption claims or cash entries;

(3) All such other papers or writing as are required by law to be recorded and such as are required by law to be filed.

He may also, upon the payment of his fees for the same, record or file such other documents or papers as may be requested by the person offering the same for recording or filing. [1967 c 98 § 1; 1919 c 182 § 1; 1893 c 119 § 11; Code 1881 § 2727; 1865 p 26 § 1; RRS § 10601.]

Claim of spouse in community realty to be filed: RCW 26.16.100.

Marriage certificate to county auditor, filing and recording, etc.: RCW 26.04.090, 26.04.100.

Purchaser of community realty protected by record title: RCW 26.16.095.

65.04.040 Photographic, microfilm, etc., recordation of instruments—Marginal notations—Arrangement of records. Any state, county, or municipal officer charged with the duty of recording instruments in public records, may, in lieu of transcription, record them by receiving number in the order filed, irrespective of the type of instrument, using a photographic or photomechanical

process, which produces a clear, legible, and durable record and which has been tested and approved for the intended purpose by the state archivist.

In addition, the county auditor, in the exercise of his duty of recording instruments in public records, may, in lieu of transcription, record all instruments, which he is charged by law to record, except plats, by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which actually reproduces or forms a durable medium for so reproducing the original, and which has been tested and approved for the intended purpose by the state archivist. If the county auditor, in lieu of transcription, records any instrument by a process herein enumerated which produces a miniature copy of the original it shall not be necessary thereafter to make any notations or marginal notes, which are otherwise required by law, thereon: *Provided*, That in lieu of making said notations thereon, the auditor shall immediately make a note of such in both the direct and inverted indexes and other appropriate indexes, in the column headed "remarks", opposite the appropriate entry.

The county auditor may provide in his office for the use of the public books containing reproductions of instruments and other materials that have been recorded pursuant to the provisions of this section. The contents of such books may be arranged according to date of filing, irrespective of type of instrument, or in such other manner as the county auditor in his discretion shall deem proper. [1967 c 98 § 2; 1959 c 254 § 1; 1919 c 125 § 1; RRS § 10602.]

State archivist: RCW 40.14.020.

65.04.050 Record of instruments, how made and kept. Every auditor must keep a general index, direct and inverted. The direct index shall be divided into seven columns, and with heads to the respective columns, as follows: Time of reception, grantor, grantee, nature of instrument, volume and page where recorded, remarks, description of property. He shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into seven columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being [in] alphabetical order. For the purposes of *this act, the term "grantor" shall be construed to mean any person conveying or encumbering the title to any property, or any person against whom any *lis pendens*, judgment, notice of lien, order of sale, execution, writ of attachment, or claims of separate or community property shall be placed on record. He shall also keep a well bound book in which shall be platted all maps of towns, villages, or additions to the same within the county, together with the description, legend, acknowledgment or other writing thereon. He shall keep an index to such books of plats, which shall contain the name of the town, village or addition. He shall also enter in the general index above referred to, the name of the party or parties platting such town, village or addition in the column prescribed for "grantors", describing the grantee in such

case as "the public": *Provided*, That the auditor shall not receive or record any such plat or map until the same shall have been approved by the mayor and common council of the municipality in which the property so platted be situated, or if such property be not situated within any municipal corporation, then such plat must be first approved by the board of county commissioners of such county: *Provided further*, That the auditor shall not receive for record any plat, map or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in his office. [1893 c 119 § 12; Code 1881 § 2728; 1869 p 314 § 24; RRS § 10603.]

*Reviser's note: The language "this act" appears in 1893 c 119, codified herein as RCW 36.22.010, 36.22.030 through 36.22.080, 65.04-.020, 65.04.030 and 65.04.050.

65.04.060 Record when lien is discharged. Whenever any mortgage, bond, lien, or instrument incumbering real estate, has been satisfied, released or discharged, whether by written release across the record or upon the margin thereof, or by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note in both the indices, in the column headed remarks, opposite to the appropriate entry, that such instrument, lien or incumbrance has been satisfied. And in all cases of the satisfaction or release of any recorded liens, mortgage, transcript of judgment, mechanic's liens, registered taxes or other incumbrance whatsoever, the auditor shall enter with red ink across the record of the instrument creating or evidencing such lien or incumbrance, the word "satisfied", with the day of the date of such satisfaction or release, and note the same in index of transcripts of judgment. [Code 1881 § 2729; 1869 p 315 § 25; RRS § 10604.]

65.04.070 Recording judgments affecting real property. The auditor must file and record with the record of deeds, grants and transfers certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he is recorder. Every such certified copy or partition, from the time of filing the same with the auditor for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders purchase and take with like notice and effect as if such copy or decree was a duly recorded deed, grant or transfer. [Code 1881 § 2730; RRS § 10605.]

65.04.080 Entries when instruments offered for record. When any instrument, paper, or notice, authorized or required by law to be filed or recorded, is deposited in the county auditor's office for filing or record, that officer must indorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and must file, or file and record the same without delay, together with the acknowledgments, proofs, and certificates written or printed upon or annexed to the same, with the plats, surveys, schedules and other papers thereto annexed, in the order and as of the time when the same was received for filing or record,

and must note on the instrument filed, or at the foot of the record the exact time of its reception, and the name of the person at whose request it was filed or filed and recorded: *Provided*, That the county auditor shall not be required to accept for filing, or filing and recording, any instrument unless there appear upon the face thereof, or be indorsed upon the back or cover thereof, the name and nature of the instrument offered for filing, or filing and recording, as the case may be. [1927 c 187 § 1; Code 1881 § 2731; 1869 p 313 § 19; RRS § 10606.]

65.04.090 Further endorsements—Delivery. He must also endorse upon such instrument, paper or notice, the time when and the book and page in which it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order. [Code 1881 § 2732; RRS § 10607.]

65.04.100 Data to be furnished upon request. The auditor must, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages and all other instruments, papers or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate and the book and pages where they are recorded. [Code 1881 § 2733; RRS § 10608.]

65.04.110 Liability of auditor for damages. If any county auditor to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded is delivered for record: (1) Neglects or refuses to record such instrument, paper or notice, within a reasonable time after receiving the same; or (2) Records any instruments, papers or notices untruly, or in any other manner than as hereinbefore directed; or, (3) Neglects or refuses to keep in his office such indexes as are required by *this act, or to make the proper entries therein; or, (4) Neglects or refuses to make the searches and to give the certificate required by *this act; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or, (5) Alters, changes or obliterates any records deposited in his office, or inserts any new matter therein; he is liable to the party aggrieved for the amount of damage which may be occasioned thereby: *Provided*, That if the name or names and address hand printed, printed or typewritten on any instrument, proved or acknowledged according to law, or on any paper or notice which may by law be filed or recorded, is or are incorrect, or misspelled or not the true name or names of the party or parties appearing thereon, the county auditor shall not, by reason of such fact, be liable for any loss or damage resulting therefrom. [1965 c 134 § 1; Code 1881 § 2734; RRS § 10609.]

*Reviser's note: The language *this act' appears in Code 1881 c 211, codified herein as RCW 5.44.070, 36.16.030 through 36.16.050,

36.16.070, 36.16.080, 36.22.110 through 36.22.130, 36.22.150, 65.04-020, 65.04.030, 65.04.050 through 65.04.110, 65.04.130, 65.04.140.

65.04.115 Names on documents, etc., to be printed or typewritten—Indexing. The name or names appearing on all documents or instruments, proved or acknowledged according to law, or on any paper which may by law be filed or recorded shall be hand printed, printed or typewritten so as to be legible and the county auditor shall index said documents and instruments in accordance with the hand printed, printed or typewritten name or names appearing thereon. [1965 c 134 § 2.]

65.04.130 Fees to be paid or tendered. Said county auditor is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are if demanded paid or tendered. [Code 1881 § 2735; RRS § 10610.]

65.04.140 Auditor as custodian of records. The county auditor in his capacity of recorder of deeds is sole custodian of all books in which are recorded deeds, mortgages, judgments, liens, incumbrances and other instruments of writing, indexes thereto, maps, charts, town plats, survey and other books and papers constituting the records and files in said office of recorder of deeds, and all such records and files are, and shall be, matters of public information, free of charge to any and all persons demanding to inspect or to examine the same, or to search the same for titles of property. It is said recorder's duty to arrange in suitable places the indexes of said books of record, and when practicable, the record books themselves, to the end that the same may be accessible to the public and convenient for said public inspection, examination and search, and not interfere with the said auditor's personal control and responsibility for the same, or prevent him from promptly furnishing the said records and files of his said office to persons demanding any information from the same. The said auditor or recorder must and shall, upon demand, and without charge, freely permit any and all persons, during reasonable office hours, to inspect, examine and search any or all of the records and files of his said office, and to gather any information therefrom, and to make any desired notes or memoranda about or concerning the same, and to prepare an abstract or abstracts of title to any and all property therein contained. [1886 p 163 § 1; 1883 p 34 § 1; Code 1881 § 2736; RRS § 10611.]

Chapter 65.08 RECORDING

Sections

65.08.030	Recorded irregular instrument imparts notice.
65.08.050	Recording land office receipts.
65.08.060	Terms defined.
65.08.070	Real property conveyances to be recorded.
65.08.080	Executory contracts.
65.08.090	Letters patent.
65.08.095	Conveyances of fee title by public bodies.
65.08.100	Certified copies.
65.08.110	Certified copies—Effect.
65.08.120	Assignment of mortgage—Notice.

65.08.130	Revocation of power of attorney.
65.08.140	No liability for error in recording when properly indexed.
65.08.150	Duty to record.
65.08.160	Recording master form instruments and mortgages or deeds of trust incorporating master form provisions.
65.08.170	Notice of additional water or sewer facility tap or connection charges—Required—Contents.
65.08.180	Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Powers of appointment: Chapter 64.24 RCW.

65.08.030 Recorded irregular instrument imparts notice. An instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor's office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force. [1953 c 115 § 1. Prior: 1929 c 33 § 8; RRS § 10599.]

65.08.050 Recording land office receipts. Every cash or final receipt from any receiver, and every cash or final certificate from any register of the United States land office, evidencing that final payment has been made to the United States as required by law, or that the person named in such certificate is entitled, on presentation thereof, to a patent from the United States for land within the state of Washington, shall be recorded by the county auditor of the county wherein such land lies, on request of any party presenting the same, and any record heretofore made of any such cash or final receipt or certificate shall, from the date when this section becomes a law, and every record hereafter made of any such receipt or certificate shall, from the date of recording, impart to third persons and all the world, full notice of all the rights and equities of the person named in said cash or final receipt or certificate in the land described in such receipt or certificate. [1890 p 92 § 1; RRS § 10613.]

65.08.060 Terms defined. (1) The term "real property" as used in RCW 65.08.060 through 65.08.150 includes lands, tenements and hereditaments and chattels real and mortgage liens thereon except a leasehold for a term not exceeding two years.

(2) The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate.

(3) The term "conveyance" includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument

releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, an executory contract for the sale or purchase of lands, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property. "To convey" is to execute a "conveyance" as defined in this subdivision.

(4) The term "recording officer" means the county auditor of the county. [1927 c 278 § 1; RRS § 10596-1.]

65.08.070 Real property conveyances to be recorded. A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record. [1927 c 278 § 2; RRS § 10596-2. Prior: 1897 c 5 § 1; Code 1881 § 2314; 1877 p 312 § 4; 1873 p 465 § 4; 1863 p 430 § 4; 1860 p 299 § 4; 1858 p 28 § 1; 1854 p 403 § 4.]

RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.

65.08.080 Executory contracts. An executory contract for the sale or purchase of real property or an instrument granting a power to convey real property as the agent or attorney for the owner of the property, when acknowledged (with the acknowledgment certified) in the manner to entitle a conveyance to be recorded, may be recorded in the office of the recording officer of any county in which any of the real property to which it relates is situated, and when so recorded shall be notice to all persons of the rights of the vendee under the contract. [1927 c 278 § 3; RRS § 10596-3.]

65.08.090 Letters patent. Letters patent from the United States or the state of Washington granting real property may be recorded in the office of the recording officer of the county where such property is situated in the same manner and with like effect as a conveyance that is entitled to be recorded. [1927 c 278 § 4; RRS § 10596-4.]

65.08.095 Conveyances of fee title by public bodies. Every conveyance of fee title to real property hereafter executed by the state or by any political subdivision or municipal corporation thereof shall be recorded by the grantor, after having been reviewed as to form by the grantee, at the expense of the grantee at the time of delivery to the grantee, and shall constitute legal delivery at the time of filing for record. [1963 c 49 § 1.]

65.08.100 Certified copies. A copy of a conveyance of or other instrument affecting real property recorded or filed in the office of the secretary of state or the commissioner of public lands, or of the record thereof,

when certified in the manner required to entitle the same to be read in evidence, may be recorded with the certificate in the office of any recording officer of the state. [1927 c 278 § 5; RRS § 10596-5.]

65.08.110 Certified copies—Effect. A copy of a record, when certified or authenticated to entitle it to be read in evidence, may be recorded in any office where the original instrument would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of the record of a conveyance or of other instrument affecting separate parcels of real property situated in more than one county, when certified or authenticated to entitle it to be read in evidence may be recorded in the office of the recording officer of any county in which any such parcel is situated with the same effect as though the original instrument were so recorded. [1927 c 278 § 6; RRS § 10596-6.]

65.08.120 Assignment of mortgage—Notice. The recording of an assignment of a mortgage is not in itself notice to the mortgagor, his heirs, assigns or personal representatives, to invalidate a payment made by any of them to a prior holder of the mortgage. [1927 c 278 § 7; RRS § 10596-7.]

65.08.130 Revocation of power of attorney. A power of attorney or other instrument recorded pursuant to RCW 65.08.060 through 65.08.150 is not deemed revoked by any act of the party by whom it was executed unless the instrument of revocation is also recorded in the same office in which the instrument granting the power was recorded. [1927 c 278 § 8; RRS § 10596-8.]

65.08.140 No liability for error in recording when properly indexed. A recording officer is not liable for recording an instrument in a wrong book, volume or set of records if the instrument is properly indexed with a reference to the volume and page where the instrument is actually of record. [1927 c 278 § 9; RRS § 10596-9. Formerly RCW 65.04.120.]

65.08.150 Duty to record. A recording officer, upon payment or tender to him of the lawful fees therefor, shall record in his office any instrument authorized or permitted to be so recorded by the laws of this state or by the laws of the United States. [1943 c 23 § 1; 1927 c 278 § 10; RRS § 10596-10. Formerly RCW 65.04.010.]

65.08.160 Recording master form instruments and mortgages or deeds of trust incorporating master form provisions. A mortgage or deed of trust of real estate may be recorded and constructive notice of the same and the contents thereof given in the following manner:

(1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county auditor of any county and the auditor of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by . . . (name of

person causing the instrument to be recorded)." Such instrument need not be acknowledged to be entitled to record.

(2) When any such instrument is recorded, the county auditor shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real estate situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page or pages where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or of part thereof, identified by its title as provided in subdivision (1) of this section and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded by the county auditor to whom the instrument is presented for recording; in such case the county auditor shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding. [1967 c 148 § 1.]

65.08.170 Notice of additional water or sewer facility tap or connection charges—Required—Contents. When any municipality as defined in RCW 35.91.020 or any county has levied or intends to levy a charge on property pertaining to:

(1) The amount required by the provisions of a contract pursuant to RCW 35.91.020 under which the water or sewer facilities so tapped into or used were constructed; or

(2) Any connection charges which are in fact reimbursement for the cost of facilities constructed by the sale of revenue bonds; or

(3) The additional connection charge authorized in RCW 35.92.025;

such municipality or county shall record in the office in which deeds are recorded of the county or counties in which such facility is located a notice of additional tap or connection charges. Such notice shall contain either

the legal description of the land affected by such additional tap or connection charges or a map making appropriate references to the United States government survey showing in outline the land affected or to be affected by such additional tap or connection charges. [1977 c 72 § 1.]

65.08.180 Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release. The notice required by RCW 65.08.170, when duly recorded, shall be effective until there is recorded in the same office in which the notice was recorded a certificate of payment and release executed by the municipality or county. Such certificate shall contain a legal description of the particular parcel of land so released and shall be recorded within thirty days of the date of payment thereof. [1977 c 72 § 2.]

Chapter 65.12

REGISTRATION OF LAND TITLES (TORRENS ACT)

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Reviser's note: The lengthy captions set forth in the 1907 session law have been abandoned in favor of the shorter section captions published throughout this chapter.

65.12.005 Registration authorized—Who may apply. The owner of any estate or interest in land, whether legal or equitable, except unpatented land, may apply as hereinafter provided to have the title of said land registered. The application may be made by the applicant personally, or by an agent thereunto lawfully authorized in writing, which authority shall be executed and acknowledged in the same manner and form as is now required as to a deed, and shall be recorded in the office of

the county auditor in the county in which the land, or the major portion thereof, is situated before the making of the application by such agent. A corporation may apply by its authorized agent, and an infant or any other person under disability by his legal guardian. Joint tenants and tenants in common shall join in the application. The person in whose behalf the application is made shall be named as applicant. [1907 c 250 § 1; RRS § 10622.]

Construction—1907 c 250: "This act shall be construed liberally, so far as may be necessary for the purpose of carrying out its general intent, which is, that any owner of land may register his title and bring his land under the provisions of this act, but no one is required so to do." [1907 c 250 § 97.]

65.12.010 Land subject to a lesser estate. It shall not be an objection to bringing land under this chapter, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien or charge; but no mortgage, lien, charge or lesser estate than a fee simple shall be registered unless the estate in fee simple to the same land is registered; and every such lesser estate, mortgage, lien or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens and charges as are so noted, except as herein provided. [1907 c 250 § 2; RRS § 10623.]

65.12.015 Tax title land—Conditions to registration. No title derived through sale for any tax or assessment, or special assessment, shall be entitled to be registered, unless it shall be made to appear that the title of the applicant, or those through whom he claims title has been adjudicated by a court of competent jurisdiction, and a decree of such court duly made and recorded, decreeing the title of the applicant, or that the applicant or those through whom he claims title have been in the actual and undisputed possession of the land under such title at least seven years, immediately prior to the application, and shall have paid all taxes and assessments legally levied thereon during said times; unless the same is vacant and unoccupied lands or lots, in which case, where title is derived through sale for any tax or assessment or special assessment for any such vacant and unoccupied lands or lots, and the applicant, or those through whom he claims title, shall have paid all taxes and assessments legally levied thereon for eight successive years immediately prior to the application, in which case such lands and lots shall be entitled to be registered as other lands provided for by this section. [1907 c 250 § 3; RRS § 10624.]

65.12.020 Application. The application shall be in writing and shall be signed and verified by the oath of the applicant, or the person acting in his behalf. It shall set forth substantially:

(1) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.

(2) Whether the applicant (except in the case of a corporation) is married or not, and, if married, the name and residence of the husband or wife, and the age of the applicant.

(3) The description of the land and the assessed value thereof, exclusive of improvements, according to the last official assessment, the same to be taken as a basis for the payments required under RCW 65.12.670 and 65.12.790(1).

(4) The applicant's estate or interest in the same, and whether the same is subject to homestead exemption.

(5) The names of all persons or parties who appear of record to have any title, claim, estate, lien or interest in the lands described in the application for registration.

(6) Whether the land is occupied or unoccupied, and if occupied by any other person than the applicant, the name and post office address of each occupant, and what estate he has or claims in the land.

(7) Whether the land is subject to any lien or incumbrance, and if any, give the nature and amount of the same, and if recorded, the book and page of record; also give the name and post office address of each holder thereof.

(8) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion or expectancy, and if any, set forth the name and post office address of every such person and the nature of his estate or claim.

(9) In case it is desired to settle or establish boundary lines, the names and post office addresses of all the owners of the adjoining lands that may be affected thereby, as far as he is able, upon diligent inquiry, to ascertain the same.

(10) If the application is on behalf of a minor, the age of such minor shall be stated.

(11) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant will also state that upon diligent inquiry he had been unable to ascertain the same. [1907 c 250 § 4; RRS § 10625.]

65.12.025 Various lands in one application. Any number of contiguous pieces of land in the same county, and owned by the same person, and in the same right, or any number of pieces of property in the same county having the same chain of title and belonging to the same person, may be included in one application. [1907 c 250 § 5; RRS § 10626.]

65.12.030 Amendment of application. The application may be amended only by supplemental statement in writing, signed and sworn to as in the case of the original application. [1907 c 250 § 6; RRS § 10627.]

65.12.035 Form of application. The form of application may, with appropriate changes, be substantially as follows:

**FORM OF APPLICATION FOR
INITIAL REGISTRATION OF TITLE TO LAND**

State of Washington, } ss.
County of }

In the superior court of the state of Washington in and
for } county.

In the matter of the application of ----- to register the title to the land hereinafter described

} PETITION

Subscribed and sworn to before me this ----- day of -----, A.D. 19---

----- Notary Public in and for the state of Washington, residing at -----

[1907 c 250 § 7; RRS § 10628.]

To the Honorable -----, judge of said court: I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge, information and belief.

First. Name of applicant, -----, age, ----- years.

Residence, ----- (number and street, if any). Married to ----- (name of husband or wife).

Second. Applications made by -----, acting as ----- (owner, agent or attorney). Residence, ----- (number, street).

Third. Description of real estate is as follows: -----

estate or interest therein is ----- and ----- subject to homestead.

Fourth. The land is ----- occupied by ----- (names of occupants), whose address is ----- (number street and town or city). The estate, interest or claim of occupant is -----

Fifth. Liens and incumbrances on the land ----- Name of holder or owner thereof is ----- Whose post office address is ----- Amount of claim, \$----- Recorded, Book -----, page -----, of the records of said county.

Sixth. Other persons, firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are ----- whose addresses are ----- respectively. Character of estate, interest or claim is -----

Seventh. Other facts connected with said land and appropriate to be considered in this registration proceeding are -----

Eighth. Therefore, the applicant prays this honorable court to find or declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same and to grant such other and further relief as may be proper in the premises.

----- (Applicant's signature)

By -----, agent, attorney, administrator or guardian.

65.12.040 Venue—Power of the court. The application for registration shall be made to the superior court of the state of Washington in and for the county wherein the land is situated. Said court shall have power to inquire into the condition of the title to and any interest in the land and any lien or encumbrance thereon, and to make all orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all persons, known, or unknown, and all liens and incumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order, priority and preference as between the same, and to remove all clouds from the title. [1907 c 250 § 8; RRS § 10629.]

65.12.050 Registrars of titles. The county auditors of the several counties of this state shall be registrars of titles in their respective counties; and their deputies shall be deputy registrars. All acts performed by registrars and deputy registrars under this law shall be performed under rules and instructions established and given by the superior court having jurisdiction of the county in which they act. [1907 c 250 § 9; RRS § 10630.]

65.12.055 Bond of registrar. Every county auditor shall, before entering upon his duties as registrar of titles, give a bond with sufficient sureties, to be approved by a judge of the superior court of the state of Washington in and for his county, payable to the state of Washington, in such sum as shall be fixed by the said judge of the superior court, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do; said bond shall be filed in the office of the secretary of state, and a copy thereof shall be filed and entered upon the records of the superior court in the county wherein the county auditor shall hold office. [1907 c 250 § 10; RRS § 10631.]

65.12.060 Deputy registrar—Duties—Vacancy. Deputy registrars shall perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in the case of the death of the registrar or his removal from office, the vacancy shall be filled in the same manner as is provided by law for filling such vacancy in the office of the county auditor. The person so appointed to fill such vacancy shall file a bond and be vested with the same powers as the registrar whose office he is appointed to fill. [1907 c 250 § 11; RRS § 10632.]

65.12.065 Registrar not to practice law—Liability for deputy. No registrar or deputy registrar shall practice as an attorney or counselor at law, nor prepare any papers in any proceeding herein provided for, nor while in the office be in partnership with any attorney or counselor at law so practicing. The registrar shall be liable for any neglect or omission of the duties of his office when occasioned by a deputy registrar, in the same manner as for his own personal neglect or omission. [1907 c 250 § 12; RRS § 10633.]

65.12.070 Nonresident to appoint agent. If the applicant is not a resident of the state of Washington, he shall file with his application a paper, duly acknowledged, appointing an agent residing in this state, giving his name in full and post office address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect when made on said agent as if made on the applicant within this state. If the agent so appointed dies or removes from the state, the applicant shall at once make another appointment in like manner, and if he fails so to do, the court may dismiss the application. [1907 c 250 § 14; RRS § 10635.]

65.12.080 Filing application—Docket and record entries. The application shall be filed in the office of the clerk of the court to which the application is made and in case of personal service a true copy thereof shall be served with the summons, and the clerk shall docket the case in a book to be kept for that purpose, which shall be known as the "land registration docket". The record entry of the application shall be entitled (name of applicant), plaintiff, against (here insert the names of all persons named in the application as being in possession of the premises, or as having any lien, incumbrance, right, title or interest in the land, and the names of all persons who shall be found by the report of the examiner hereinafter provided for to be in possession or to have any lien, incumbrance, right, title or interest in the land), also all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the application herein, defendants.

All orders, judgments and decrees of the court in the case shall be appropriately entered in such docket. All final orders or decrees shall be recorded, and proper reference made thereto in such docket. [1907 c 250 § 15; RRS § 10636.]

65.12.085 Filing abstract of title. The applicant shall also file with the said clerk, at the time the application is made, an abstract of title such as is now commonly used, prepared and certified to by the county auditor of the county, or a person, firm or corporation regularly engaged in the abstract business, and having satisfied the said superior court that they have a complete set of abstract books and are in existence and doing business at the time of the filing of the application under this chapter. [1907 c 250 § 15a; RRS § 10637.]

65.12.090 Examiner of titles—Appointment—Oath—Bond. The judges of the superior court in and

for the state of Washington for the counties for which they were elected or appointed shall appoint a competent attorney in each county to be examiner of titles and legal adviser of the registrar. The examiner of titles in each county shall be paid in each case by the applicant such compensation as the judge of the superior court of the state of Washington in and for that county shall determine. Every examiner of titles shall, before entering upon the duties of his office, take and subscribe an oath of office to faithfully and impartially perform the duties of his office, and shall also give a bond in such amount and with such sureties as shall be approved by the judge of the said superior court, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall be entered upon the records of said court and the original shall be filed with the registrar. [1907 c 250 § 13; RRS § 10634.]

65.12.100 Copy of application as lis pendens. At the time of the filing of the application in the office of the clerk of the court, a copy thereof, certified by the clerk, shall be filed (but need not be recorded) in the office of the county auditor, and shall have the force and effect of a lis pendens. [1907 c 250 § 16; RRS § 10638.]

65.12.110 Examination of title. Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right, and, also as to all judgments against the applicant or those through whom he claims title, which may be a lien upon the lands described in the application; he shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his application. The election shall be made in writing, and filed with the clerk of the court. [1907 c 250 § 17; RRS § 10639.]

65.12.120 Summons to issue. If, in the opinion of the examiner, the applicant has a title, as alleged, and proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the clerk of the court shall, immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be, issue a summons substantially in the form hereinafter provided. The summons shall be issued by the order of the court and attested by the clerk of the court. [1907 c 250 § 18; RRS § 10640.]

65.12.125 Summons—Form. The summons provided for in RCW 65.12.135 shall be in substance in the form following, to wit:

SUMMONS ON APPLICATION FOR REGISTRATION OF LAND

State of Washington, }
County of } ss.

In the superior court of the state of Washington in and for the county of (name of applicant), plaintiff, versus (names of all defendants), and all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate, described in the application herein defendants.

The state of Washington to the above-named defendants, greeting:

You are hereby summoned and required to answer the application of the applicant plaintiff in the above entitled application for registration of the following land situate in county, Washington, to wit: (description of land), and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said application within the time aforesaid, the applicant plaintiff in this action will apply to the court for the relief demanded in the application herein.

Witness,, clerk of said court and the seal thereof, at, in said county and state, this day of, A.D. 19...

(Seal.) Clerk.

[1907 c 250 § 206; RRS § 10644.]

65.12.130 Parties to action. The applicant shall be known in the summons as the plaintiff. All persons named in the application or found by the report of the examiner as being in possession of the premises or as having of record any lien, incumbrance, right, title, or interest in the land, and all other persons who shall be designated as follows, viz: "All other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein," shall be and shall be known as defendants. [1907 c 250 § 19; RRS § 10641.]

65.12.135 Service of summons. The summons shall be directed to the defendants and require them to appear and answer the application within twenty days after the service of the summons, exclusive of the day of service; and said summons shall be served as is now provided for the service of summons in civil actions in the superior court in this state, except as herein otherwise provided. The summons shall be served upon nonresident defendants and upon "all such unknown persons or parties," defendant, by publishing said summons in a newspaper of general circulation printed and published in the county where the application is filed, once in each week for three consecutive weeks, and such service by publication shall be deemed complete at the end of the twenty-first day from and including the first publication, provided that if any named defendant assents in writing to the registration as prayed for, which assent

shall be endorsed upon the application or filed therewith and be duly witnessed and acknowledged, then in all such cases no service of summons upon said defendant shall be necessary. [1907 c 250 § 20; RRS § 10642.]

65.12.140 Copy mailed to nonresidents—Proof—Expense. The clerk of the court shall also, on or before twenty days after the first publication, send a copy thereof by mail to such defendants who are not residents of the state whose place of address is known or stated in the application, and whose appearance is not entered and who are not in person served with the summons. The certificate of the clerk that he has sent such notice, in pursuance of this section, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant, and proof of the service thereof shall be made as proof of service is now made in other civil actions. [1907 c 250 § 20a; RRS § 10643.]

65.12.145 Guardians ad litem. The court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability, and for all other persons not in being who may appear to have an interest in the land. The compensation of the said guardian shall be determined by the court, and paid as a part of the expense of the proceeding. [1907 c 250 § 21; RRS § 10645.]

65.12.150 Who may appear—Answer. Any person claiming an interest, whether named in the summons or not, may appear and file an answer within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the interests claimed by the party filing the same, and shall be signed and sworn to by him or by some person in his behalf. [1907 c 250 § 22; RRS § 10646.]

65.12.155 Judgment by default—Proof. If no person appears and answers within the time named in the summons, or allowed by the court, the court may at once, upon the motion of the applicant, no reason to the contrary appearing, upon satisfactory proof of the applicant's right thereto, make its order and decree confirming the title of the applicant and ordering registration of the same. By the description in the summons, "all other persons unknown, claiming any right, title, lien, or interest in, to, or upon the real estate described in the application herein", all the world are made parties defendant, and shall be concluded by the default, order and decree. The court shall not be bound by the report of the examiners of title, but may require other or further proof. [1907 c 250 § 23; RRS § 10647.]

65.12.160 Cause set for trial—Default—Referral. If, in any case an appearance is entered and answer filed, the cause shall be set down for hearing on motion of either party, but a default and order shall first be entered against all persons who do not appear and answer

in the manner provided in RCW 65.12.155. The court may refer the cause or any part thereof to one of the examiners of title, as referee, to hear the parties and their evidence, and make report thereon to the court. His report shall have the same force and effect as that of a referee appointed by the said superior court under the laws of this state now in force, and relating to the appointment, duties and powers of referees. [1907 c 250 § 24; RRS § 10648.]

65.12.165 Court may require further proof. The court may order such other or further hearing of the cause before the court or before the examiner of titles after the filing of the report of the examiner, referred to in RCW 65.12.160, and require such other and further proof by either of the parties to the cause as to the court shall seem meet and proper. [1907 c 250 § 25; RRS § 10649.]

65.12.170 Application dismissed or withdrawn. If, in any case, after hearing, the court finds that the applicant has not title proper for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may dismiss his application at any time, before the final decree, upon such terms as may be fixed by the court, and upon motion to dismiss duly made by the court. [1907 c 250 § 26; RRS § 10650.]

65.12.175 Decree of registration—Effect—Appeal. If the court, after hearing, finds that the applicant has title, whether as stated in his application or otherwise, proper for registration, a decree of confirmation of title and registration shall be entered. Every decree of registration shall bind the land, and quiet the title thereto, except as herein otherwise provided, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the application, or included in "all other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein", and such decree shall not be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any proceeding at law, or in equity, for reversing judgments or decrees, except as herein especially provided. An appeal may be taken to the supreme court or the court of appeals of the state of Washington, within the same time, upon like notice, terms and conditions as are now provided for the taking of appeals from the superior court to the supreme court or the court of appeals of the state of Washington in civil actions. [1971 c 81 § 132; 1907 c 250 § 27; RRS § 10651.]

65.12.180 Rights of persons not served. Any person having an interest in or lien upon the land who has not been actually served with process or notified of the filing of the application or the pendency thereof, may at any time within ninety days after the entry of such decree, and not afterwards, appear and file his sworn answer to such application in like manner as hereinbefore prescribed for making answer: *Provided, however,* That

such person had no actual notice or information of the filing of such application or the pendency of the proceedings during the pendency thereof, or until within three months of the time of the filing of such answer, which facts shall be made to appear before answering by the affidavit of the person answering or the affidavit of some one in his behalf having knowledge of the facts, and *provided, also,* that no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided; but any person aggrieved by such decree in any case may pursue his remedy by suit in the nature of an action of tort against the applicant or any other person for fraud in procuring the decree; and may also bring his action for indemnity as hereinafter provided. Upon the filing of such answer, and not less than ten days' notice having been given to the applicant, and to such other interested parties as the court may order in such manner as shall be directed by the court, the court shall proceed to review the case, and if the court is satisfied that the order or decree ought to be opened, an order shall be entered to that effect, and the court shall proceed to review the proceedings, and shall make such order in the case as shall be equitable in the premises. An appeal may be allowed in this case, as well as from all other decrees affecting any registered title within a like time, and in a like manner, as in the case of an original decree under this chapter, and not otherwise. [1907 c 250 § 28; RRS § 10652.]

65.12.190 Limitation of actions. No person shall commence any proceeding for the recovery of lands or any interest, right, lien or demand therein or upon the same adverse to the title or interest as found, or decreed in the decree of registration, unless within ninety days after the entry of the order or decree; and this section shall be construed as giving such right of action to such person only as shall not, because of some irregularity, insufficiency, or for some other cause, be bound and concluded by such order or decree. [1907 c 250 § 29; RRS § 10653.]

65.12.195 Title free from incumbrances—Exceptions. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances except only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar's office, and except any of the following rights or incumbrances subsisting, namely:

(1) Any existing lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.

(2) All public highways embraced in the description of the land included in the certificates shall be deemed to be excluded from the certificate. And any subsisting right of way or other easement, for ditches or water rights, upon, over or in respect to the land.

(3) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.

(4) Such right of appeal, or right to appear and contest the application, as is allowed by this chapter. And,

(5) Liens, claims or rights, if any, arising or existing under the constitution or laws of the United States, and which the statutes of this state cannot or do not require to appear of record in the office of the county clerk and county auditor. [1907 c 250 § 30; RRS § 10654.]

65.12.200 Decree—Contents—Filing. Every decree of registration shall bear the date of the year, day, hour and minute of its entry, and shall be signed by the judge of the superior court of the state of Washington in and for the county in which the land is situated; it shall state whether the owner is married or unmarried, and if married, the name of the husband or wife; if the owner is under disability it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, homesteads and other incumbrances, including rights of husband and wife, if any, to which the land or the owner's estate is subject, and shall contain any other matter or information properly to be determined by the court in pursuance of this chapter. The decree shall be stated in a convenient form for transcription upon the certificate of title, to be made as hereinafter provided by the registrar of titles. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof in the office of the registrar of titles. [1907 c 250 § 31; RRS § 10655.]

65.12.210 Interest acquired after filing application. Any person who shall take by conveyance, attachment, judgment, lien or otherwise any right, title or interest in the land, subsequent to the filing of a copy of the application for registration in the office of the county auditor, shall at once appear and answer as a party defendant in the proceeding for registration, and the right, title or interest of such person shall be subject to the order or decree of the court. [1907 c 250 § 32; RRS § 10656.]

65.12.220 Registration—Effect. The obtaining of a decree of registration and receiving of a certificate of title shall be deemed an agreement running with the land and binding upon the applicant and the successors in title, that the land shall be and forever remain registered land, subject to the provisions of this chapter and of all acts amendatory thereof, unless the same shall be withdrawn from registration in the manner hereinafter provided. All dealings with the land or any estate or interest therein after the same has been brought under this chapter, and all liens, encumbrances, and charges upon the same shall be made only subject to the terms of this chapter, so long as said land shall remain registered land and until the same shall be withdrawn from registration

in the manner hereinafter provided. [1917 c 62 § 1; 1907 c 250 § 33; RRS § 10657.]

65.12.225 Withdrawal authorized—Effect. The owner or owners of any lands, the title to which has been or shall hereafter be registered in the manner provided by law, shall have the right to withdraw said lands from registration in the manner hereinafter provided, and after the same have been so withdrawn from registration, shall have the right to contract concerning, convey, encumber or otherwise deal with the title to said lands as freely and to the same extent and in the same manner as though the title had not been registered. [1917 c 62 § 2; RRS § 10658.]

65.12.230 Application to withdraw. The owner or owners of registered lands, desiring to withdraw the same from registration, shall make and file with the registrar of titles in the county in which said lands are situated, an application in substantially the following form:

To the registrar of titles in the county of -----, state of Washington:

I, (or we), -----, the undersigned registered owner-- in fee simple of the following described real property situated in the county of -----, state of Washington, to wit: (here insert the description of the property), hereby make application to have the title to said real property withdrawn from registration.

Witness my (or our) hand-- and seal-- this ----- day of -----, 19---

Applicant's signature.

Said application shall be acknowledged in the same manner as is required for the acknowledgment of deeds. [1917 c 62 § 3; RRS § 10659.]

65.12.235 Certificate of withdrawal. Upon the filing of such application and the payment of a fee of five dollars, the registrar of titles, if it shall appear that the application is signed and acknowledged by all the registered owners of said land, shall issue to the [applicant] a certificate in substantially the following form:

This is to certify, That ----- the owner (or owners) in fee simple of the following described lands situated in the county of -----, state of Washington, the title to which has been heretofore registered under the laws of the state of Washington, to wit: (here insert description of the property), having heretofore filed his (or their) application for the withdrawal of the title to said lands from the registry system; Now, therefore, The title to said above described lands has been withdrawn from the effect and operation of the title registry system of the state of Washington and the owner (or owners) of said lands is (or are) by law authorized to contract concerning, convey, encumber or otherwise deal with the title to said lands in the same manner and to the same extent as though said title had never been registered.

Witness my hand and seal this ----- day of -----, 19---

 Registrar of Titles for
 ----- county.

[1973 c 121 § 1; 1917 c 62 § 4; RRS § 10660.]

65.12.240 Effect of recording. The person receiving such certificate of withdrawal shall record the same in the record of deeds in the office of the county auditor of the county in which the lands are situated and thereafter the title to said lands shall be conveyed or encumbered in the same manner as the title to lands that have not been registered. [1917 c 62 § 5; RRS § 10661.]

65.12.245 Title prior to withdrawal unaffected. *This act shall not be construed to disturb the effect of any proceedings under said registry system, wherein the question of title to said real property has been determined, but all proceedings had in connection with the registering of said title, relating to the settlement or determination of said title, prior to such withdrawal, shall have the same force and effect as if said title still remained under said registry system. [1917 c 62 § 6; RRS § 10662.]

*Reviser's note: The language "This act" appears in 1917 c 62 codified herein as RCW 65.12.220 through 65.12.245.

65.12.250 Entry of registration—Records. Immediately upon the filing of the decree of registration in the office of the registrar of titles, the registrar shall proceed to register the title or interest pursuant to the terms of the decree in the manner herein provided. The registrar shall keep a book known as the "Register of Titles", wherein he shall enter all first and subsequent original certificates of title by binding or recording them therein in the order of their numbers, consecutively, beginning with number one, with appropriate blanks for entry of memorials and notations allowed by this chapter. Each certificate, with such blanks, shall constitute a separate page of such book. All memorials and notations that may be entered upon the register shall be entered upon the page whereon the last certificate of title of the land to which they relate is entered. The term certificate of title used in this chapter shall be deemed to include all memorials and notations thereon. [1907 c 250 § 34; RRS § 10663.]

65.12.255 Certificate of title. The certificate of registration shall contain the name of the owner, a description of the land and of the estate of the owner, and shall by memorial or notation contain a description of all incumbrances, liens and interests to which the estate of the owner is subject; it shall state the residence of the owner and, if a minor, give his age; if under disability, it shall state the nature of the disability; it shall state whether married or not, and, if married, the name of the husband or wife; in case of a trust, condition or limitation, it shall state the trust, condition or limitation, as the case may be; and shall contain and conform in respect to all statements to the certified copy of the decree of registration

filed with the registrar of titles as hereinbefore provided; and shall be in form substantially as follows:

FIRST CERTIFICATE OF TITLE

Pursuant to order of the superior court of the state of Washington, in and for ----- county.

State of Washington, }
 County of ----- } ss.

This is to certify that A.----- B.----- of -----, county of -----, state of -----, is now the owner of an estate (describe the estate) of, and in (describe the land), subject to the incumbrances, liens and interests noted by the memorial underwritten or indorsed thereon, subject to the exceptions and qualifications mentioned in the thirtieth section of "An Act relating to the registration and confirmation of titles to land," in the session laws of Washington for the year 1907 [RCW 65.12.195]. (Here note all statements provided herein to appear upon the certificate.)

In witness whereof, I have hereunto set my hand and affixed the official seal of my office this ----- day of -----, A.D. 19---

(Seal)

 Registrar of Titles.

[1907 c 250 § 35; RRS § 10664.]

65.12.260 Owner's certificate—Receipt. The registrar shall, at the time that he enters his original certificate of title, make an exact duplicate thereof, but putting on it the words "Owner's duplicate certificate of ownership", and deliver the same to the owner or to his attorney duly authorized. For the purpose of preserving evidence of the signature and handwriting of the owner in his office, it shall be the duty of the registrar to take from the owner, in every case where it is practicable so to do, his receipt for the certificate of title which shall be signed by the owner in person. Such receipt, when signed and delivered in the registrar's office, shall be witnessed by the registrar or deputy registrar. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as is now provided for the acknowledgment of deeds. When so signed, such receipt shall be prima facie evidence of the genuineness of such signature. [1907 c 250 § 36; RRS § 10665.]

65.12.265 Tenants in common. Where two or more persons are registered owners as tenants in common or otherwise, one owner's duplicate certificate can be issued for the entirety, or a separate duplicate owner's certificate may be issued to each owner for his undivided share. [1907 c 250 § 37; RRS § 10666.]

65.12.270 Subsequent certificates. All certificates subsequent to the first shall be in like form, except that they shall be entitled: "Transfer from No. -----", (the number of the next previous certificate relating to the same land), and shall also contain the words "Originally registered on the ----- day of -----, 19--, and

entered in the book ----- at page ----- of register." [1907 c 250 § 38; RRS § 10667.]

65.12.275 Exchange of certificates—Platting land.

A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it and take out several certificates for portions thereof. A registered owner holding several duplicate certificates for several distinct parcels of land may surrender them and take out a single duplicate certificate for all of said parcels, or several certificates for different portions thereof. Such exchange of certificates, however, shall only be made by the order of the court upon petition therefor duly made by the owner. An owner of registered land who shall subdivide such land into lots, blocks or acre tracts shall file with the registrar of titles a plat of said land so subdivided, in the same manner and subject to the same rules of law and restrictions as is provided for platting land that is not registered. [1907 c 250 § 39; RRS § 10668.]

65.12.280 Effective date of certificate. The certificate of title shall relate back to and take effect as of the date of the decree of registration. [1907 c 250 § 40; RRS § 10669.]

65.12.290 Certificate of title as evidence. The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar of titles or his deputy, and authenticated by his seal and also the owner's duplicate certificate shall be received as evidence in all the courts of this state, and shall be conclusive as to all matters contained therein, except so far as is otherwise provided in this chapter. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail. [1907 c 250 § 41; RRS § 10670.]

65.12.300 Indexes and files—Forms. The registrar of titles, under the direction of the court, shall make and keep indexes of all duplication and of all certified copies and decrees of registration and certificates of titles, and shall also index and file in classified order all papers and instruments filed in his office relating to applications and to registered titles. The registrar shall also, under the direction of the court, prepare and keep forms of indexes and entry books. The court shall prepare and adopt convenient forms of certificates of titles, and also general forms of memorials or notations to be used by the registrars of titles in registering the common forms of conveyance and other instruments to express briefly their effect. [1907 c 250 § 42; RRS § 10671.]

65.12.310 Tract and alphabetical indexes. The registrar of titles shall keep tract indexes, in which shall be entered the lands registered in the numerical order of the townships, ranges, sections, and in cases of subdivisions, the blocks and lots therein, and the names of the owners, with a reference to the volume and page of the register of titles in which the lands are registered. He shall also keep alphabetical indexes, in which shall be

entered, in alphabetical order, the names of all registered owners, and all other persons interested in, or holding charges upon, or any interest in, the registered land, with a reference to the volume and page of the register of titles in which the land is registered. [1907 c 250 § 43; RRS § 10672.]

65.12.320 Dealings with registered land. The owner of registered land may convey, mortgage, lease, charge or otherwise incumber, dispose of or deal with the same as fully as if it had not been registered. He may use forms of deeds, trust deeds, mortgages and leases or voluntary instruments, like those now in use, and sufficient in law for the purpose intended. But no voluntary instrument of conveyance, except a will and a lease, for a term not exceeding three years, purporting to convey or affect registered land, shall take effect as a conveyance, or bind the land; but shall operate only as a contract between the parties, and as evidence of the authority to the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land. [1907 c 250 § 44; RRS § 10673.]

65.12.330 Registration has effect of recording. Every conveyance, lien, attachment, order, decree, judgment of a court of record, or instrument or entry which would, under existing law, if recorded, filed or entered in the office of the county clerk, and county auditor, of the county in which the real estate is situate, affect the said real estate to which it relates, if the title thereto were not registered, shall, if recorded, filed or entered in the office of the registrar of titles in the county where the real estate to which such instrument relates is situate, affect in like manner the title thereto if registered, and shall be notice to all persons from the time of such recording, filing or entering. [1907 c 250 § 45; RRS § 10674.]

65.12.340 Filing—Numbering—Indexing—Public records. The registrar of titles shall number and note in a proper book to be kept for that purpose, the year, month, day, hour and minute of reception and number of all conveyances, orders or decrees, writs or other process, judgments, liens, or all other instruments, or papers or orders affecting the title of land, the title to which is registered. Every instrument so filed shall be retained in the office of the registrar of titles, and shall be regarded as registered from the time so noted, and the memorial of each instrument, when made on the certificate of title to which it refers, shall bear the same date. Every instrument so filed, whether voluntary or involuntary, shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records and papers, relating to registered land, in the office of the registrar of titles shall be open to public inspection, in the same manner as are now the papers and records in the office of the county clerk and county auditor. [1907 c 250 § 46; RRS § 10675.]

65.12.350 Duplicate of instruments certified—Fees. Duplicates of all instruments, voluntary or involuntary, filed and registered in the office of the registrar

of titles, may be presented with the originals, and shall be attested and sealed by the registrar of titles, and indorsed with the file number and other memoranda on the originals, and may be taken away by the person presenting the same. Certified copies of all instruments filed and registered may be obtained from the registrar of titles, on the payment of a fee of the same amount as is now allowed the county clerk and county auditor, for a like certified copy. [1907 c 250 § 47; RRS § 10676.]

65.12.360 New certificate—Register of less than fee—When form of memorial in doubt. No new certificate shall be entered or issued upon any transfer of registered land, which does not divest the title in fee simple of said land or some part thereof, from the owner or some one of the registered owners. All interest in the registered land, less than a freehold estate, shall be registered by filing with the registrar of titles, the instruments creating, transferring or claiming such interest, and by a brief memorandum or memorial thereof, made by a registrar of titles upon the certificate of title, and signed by him. A similar memorandum, or memorial, shall also be made on the owner's duplicate.

The cancellation or extinguishment of such interests shall be registered in the same manner. When any party in interest does not agree as to the proper memorial to be made upon the filing of any instrument, (voluntary or involuntary), presented for registration, or where the registrar of titles is in doubt as to the form of such memorial, the question shall be referred to the court for decision, either on the certificate of the registrar of titles, or upon the demand in writing of any party in interest.

The registrar of titles shall bring before the court all the papers and evidence which may be necessary for the determination of the question by the court. The court, after notice to all parties in interest and a hearing, shall enter an order prescribing the form of the memorial, and the registrar of titles shall make registration in accordance therewith. [1907 c 250 § 48; RRS § 10677.]

65.12.370 Owner's certificate to be produced when new certificate issued. No new certificates of titles shall be entered, and no memorial shall be made upon any certificate of title, in pursuance of any deed, or other voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases provided for in this chapter, or upon the order of the court for cause shown; and whenever such order is made a memorial therefor shall be entered, or a new certificate issued, as directed by said order. The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles, to enter a new certificate, or to make a memorial of registration in accordance with such instrument; and a new certificate or memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith. [1907 c 250 § 49; RRS § 10678.]

65.12.375 Owner's duplicate certificate. In the event that an owner's duplicate certificate of title shall be lost, mislaid or destroyed, the owner may make affidavit of the fact before any officer authorized to administer oaths, stating, with particularly, the facts relating to such loss, mislaying or destruction, and shall file the same in the office of the registrar of titles.

Any party in interest may thereupon apply to the court, and the court shall, upon proofs of the facts set forth in the affidavits, enter an order directing the registrar of titles to make and issue a new owner's duplicate certificate, such new owner's duplicate certificate shall be printed or marked, "Certified copy of owner's duplicate certificate", and such certified copy shall stand in the place of and have like effect as the owner's duplicate certificate. [1907 c 250 § 50; RRS § 10679.]

65.12.380 Conveyance of registered land. An owner of registered land, conveying the same, or any portion thereof, in fee, shall execute a deed of conveyance, which the grantor shall file with the registrar of titles in the county where the land lies. The owner's duplicate certificate shall be surrendered at the same time and shall be by the registrar marked "Canceled". The original certificate of title shall also be marked "Canceled". The registrar of titles shall thereupon entered in the register of titles, a new certificate of title to the grantee, and shall prepare and deliver to such grantee an owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate or certificates, except insofar as they may be simultaneously released or discharged.

When only a part of the land described in a certificate is transferred, or some estate or interest in the land is to remain in the transferor, a new certificate shall be issued to him, for the part, estate or interest remaining in him. [1907 c 250 § 51; RRS § 10680.]

65.12.390 Certificate of tax payment. Before any deed, plat or other instrument affecting registered land shall be filed or registered in the office of the registrar of titles, the owner shall present a certificate from the county treasurer showing that all taxes then due thereon have been paid. [1907 c 250 § 52; RRS § 10681.]

65.12.400 Registered land charged as other land. Registered land and ownership therein shall in all respects be subject to the same burdens and incidents which attach by law to unregistered land. Nothing contained in this chapter shall in any way be construed to relieve registered land, or the owners thereof, from any rights incident to the relation of husband and wife, or from liability to attachment of mesne process, or levy on execution, or from liability from any lien of any description established by law on land or the improvements thereon, or the interest of the owner in such land or improvements, or to change the laws of descent, or the rights of partition between cotenants, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy, under the provisions of law relating thereto; or to change or affect in any way,

any other rights or liabilities, created by law, applicable to unregistered land, except as otherwise expressly provided in this chapter, or any amendments hereof. [1907 c 250 § 53; RRS § 10682.]

65.12.410 Conveyances by attorney in fact. Any person may by attorney convey or otherwise deal with registered land, but the letters or power of attorney shall be acknowledged and filed with the registrar of titles, and registered. Any instrument revoking such letters, or power of attorney, shall be acknowledged in like manner. [1907 c 250 § 54; RRS § 10683.]

65.12.420 Encumbrances by owner. The owner of registered land may mortgage or encumber the same, by executing a trust deed or other instrument, sufficient in law for that purpose, and such instrument may be assigned, extended, discharged, released, in whole or in part, or otherwise dealt with by the mortgagee, by any form of instrument sufficient in law for the purpose; but such trust deed or other instrument, and all instruments assigning, extending, discharging, releasing or otherwise dealing with the encumbrance, shall be registered, and shall take effect upon the title only from the time of registration. [1907 c 250 § 55; RRS § 10684.]

65.12.430 Registration of mortgages. A trust deed shall be deemed to be a mortgage, and be subject to the same rules as a mortgage, excepting as to the manner of the foreclosure thereof. The registration of a mortgage shall be made in the following manner, to wit: The owner's duplicate certificate shall be presented to the registrar of titles with the mortgage deed or instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate, a memorial of the purport of the instrument registered, the time of filing, and the file number of the registered instrument. He shall also note upon the instrument registered, the time of filing, and a reference to the volume and page of the register of titles, wherein the same is registered. The registrar of titles shall also, at the request of the mortgagee, make out and deliver to him a duplicate certificate of title, like the owner's duplicate, except that the words, "Mortgagee's duplicate", shall be written or printed upon such certificate in large letters, diagonally across the face. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the certificate of title. [1907 c 250 § 56; RRS § 10685.]

65.12.435 Dealings with mortgages. Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate, and upon the original certificate of title. When the mortgage is discharged, or otherwise extinguished, the mortgagee's duplicate shall be surrendered and stamped, "Canceled". In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the

entry shall be made by a memorial according in like manner as before provided for a release or discharge.

The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented. A mortgage on registered land may be discharged in whole or in part by the mortgagee in person on the register of titles in the same manner as a mortgage on unregistered land may be discharged by an entry on the margin of the record thereof, in the auditor's office, and such discharge shall be attested by the registrar of titles. [1907 c 250 § 57; RRS § 10686.]

65.12.440 Foreclosures on registered land. All charges upon registered land, or any estate or interest in the same, and any right thereunder, may be enforced as is now allowed by law, and all laws relating to the foreclosure of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that a notice of the pendency of any suit or of any proceeding to enforce or foreclose the mortgage, or any charge, shall be filed in the office of the registrar of titles, and a memorial thereof entered on the register, at the time of, or prior to, the commencement of such suit, or the beginning of any such proceeding. A notice so filed and registered shall be notice to the registrar of titles and all persons dealing with the land or any part thereof. When a mortgagee's duplicate has been issued, such duplicate shall, at the time of the registering of the notice, be presented, and a memorial of such notice shall be entered upon the mortgagee's duplicate. [1907 c 250 § 58; RRS § 10687.]

65.12.445 Registration of final decree—New certificate. In any action affecting registered land a judgment or final decree shall be entitled to registration on the presentation of a certified copy of the entry thereof from the clerk of the court where the action is pending to the registrar of titles. The registrar of titles shall enter a memorial thereof upon the original certificates of title, and upon the owner's duplicate, and also upon the mortgagee's and lessee's duplicate, if any there be outstanding. When the registered owner of such land is, by such judgment or decree, divested of his estate in fee to the land or any part thereof, the plaintiff or defendant shall be entitled to a new certificate of title for the land, or that part thereof, designated in the judgment or decree, and the registrar of titles shall enter such new certificate of title, and issue a new owner's duplicate, in such manner as is provided in the case of voluntary conveyance: *Provided, however,* That no such new certificate of title shall be entered, except upon the order of the superior court of the county in which the land is situated, and upon the filing in the office of the registrar of titles, an order of the court directing the entry of such new certificate. [1907 c 250 § 59; RRS § 10688.]

65.12.450 Title on foreclosure—Registration. Any person who has, by any action or proceeding to enforce or foreclose any mortgage, lien or charge upon registered land, become the owner in fee of the land, or any part thereof, shall be entitled to have his title registered, and

the registrar of titles shall, upon application therefor, enter a new certificate of title for the land, or that part thereof, of which the applicant is the owner, and issue an owner's duplicate, in such manner as in the case of a voluntary conveyance of registered land: *Provided, however*, No such new certificate of title shall be entered, except after the time to redeem from such foreclosure has expired, and upon the filing in the office of the registrar of titles, an order of the superior court of the county directing the entry of such new certificates. [1907 c 250 § 60; RRS § 10689.]

65.12.460 Petition for new certificate. In all cases wherein, by this chapter, it is provided that a new certificate of title to registered land shall be entered by order of the court a person applying for such new certificate shall apply to the court by petition, setting forth the facts; and the court shall, after notice given to all parties in interest, as the court may direct, and upon hearing, make an order or decree for the entry of a new certificate to such person as shall appear to be entitled thereto. [1907 c 250 § 61; RRS § 10690.]

65.12.470 Registration of leases. Leases for registered land, for a term of three years or more, shall be registered in like manner as a mortgage, and the provisions herein relating to the registration of mortgages, shall also apply to the registration of leases. The registrar shall, at the request of the lessee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except the words, "Lessee's duplicate", shall be written or printed upon it in large letters diagonally across its face. [1907 c 250 § 62; RRS § 10691.]

65.12.480 Instruments with conditions. Whenever a deed, or other instrument, is filed in the office of the registrar of titles, for the purpose of effecting a transfer of or charge upon the registered land, or any estate or interest in the same, and it shall appear that the transfer or charge is to be in trust or upon condition or limitation expressed in such deed or instrument, such deed or instrument shall be registered in the usual manner, except that the particulars of the trust, condition, limitation or other equitable interest shall not be entered upon the certificate of title by memorial, but a memorandum or memorial shall be entered by the words, "in trust", or "upon condition", or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate.

No transfer of, or charge upon, or dealing with, the land, estate or interest therein, shall thereafter be registered, except upon an order of the court first filed in the office of the registrar of titles, directing such transfer, charge, or dealing, in accordance with the true intent and meaning of the trust, condition or limitation. Such registration shall be conclusive evidence in favor of the person taking such transfer, charge, or right; and those claiming under him, in good faith, and for a valuable consideration, that such transfer, charge or other dealing is in accordance with the true intent and meaning of the

trust, condition, or limitation. [1907 c 250 § 63; RRS § 10692.]

65.12.490 Transfers between trustees. When the title to registered land passes from a trustee to a new trustee, a new certificate shall be entered to him, and shall be registered in like manner as upon an original conveyance in trust. [1907 c 250 § 64; RRS § 10693.]

65.12.500 Trustee may register land. Any trustee shall have authority to file an application for the registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust. [1907 c 250 § 65; RRS § 10694.]

65.12.510 Creation of lien on registered land. In every case where writing of any description, or copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of the registrar of titles, in the county in which the land lies, and, in addition to any particulars required in such papers, for the filing or recording, shall also contain a reference to the number of the certificate of title of the land to be affected, and also, if the attachment, right or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for the identification of the land intended to be affected. [1907 c 250 § 66; RRS § 10695.]

65.12.520 Registration of liens. All attachments, liens and rights, of every description, shall be enforced, continued, reduced, discharged and dissolved, by any proceeding or method, sufficient and proper in law to enforce, continue, reduce, discharge or dissolve, like liens or unregistered land. All certificates, writing or other instruments, permitted or required by law, to be filed or recorded, to give effect to the enforcement, continuance, reduction, discharge or dissolution of attachments, liens or other rights upon registered land, or to give notice of such enforcement, continuance, reduction, discharge or dissolution, shall in the case of like attachments, liens or other rights upon registered land, be filed with the registrar of titles, and registered in the register of titles, in lieu of filing or recording. [1907 c 250 § 67; RRS § 10696.]

65.12.530 Entry as to plaintiff's attorney. The name and address of the attorney for the plaintiff in every action affecting the title to registered land, shall, in all cases, be endorsed upon the writ or other writing filed in the office of the registrar of titles, and he shall be deemed the attorney of the plaintiff until written notice that he has ceased to be such plaintiff's attorney shall be filed for registration by the plaintiff. [1907 c 250 § 68; RRS § 10697.]

65.12.540 Decree. A judgment, decree, or order of any court shall be a lien upon, or affect registered land, or any estate or interest therein, only when a certificate

under the hand and official seal of the clerk of the court in which the same is of record, stating the date and purport of the judgment, decree, or order, or a certified copy of such judgment, decree, or order, or transcript of the judgment docket, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected. [1907 c 250 § 69; RRS § 10698.]

65.12.550 Title acquired on execution. Any person who has acquired any right, interest or estate in registered land by virtue of any execution, judgment, order or decree of the court, shall register his title so acquired, by filing in the office of the registrar of titles all writings or instruments permitted or required to be recorded in the case of unregistered land. If the interest or estate so acquired is the fee in the registered land, or any part thereof, the person acquiring such interest shall be entitled to have a new certificate of title, registered in him, in the same manner as is provided in the case of persons acquiring title by an action or proceeding in foreclosure of mortgages. [1907 c 250 § 70; RRS § 10699.]

65.12.560 Termination of proceedings. The certificate of the clerk of the court in which any action or proceeding shall be pending, or any judgment or decree is of record, that such action or proceeding has been dismissed or otherwise disposed of, or that the judgment, decree, or order has been satisfied, released, reversed or overruled, or of any sheriff or any other officer that the levy of any execution, attachment, or other process, certified by him, has been released, discharged, or otherwise disposed of, being filed in the office of the registrar of titles and noted upon the register, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such action, proceeding, judgment, decree, order, or levy, according to the purport of such certificate. [1907 c 250 § 71; RRS § 10700.]

65.12.570 Land registered only after redemption period. Whenever registered land is sold, and the same is by law subject to redemption by the owner or any other person, the purchaser shall not be entitled to have a new certificate of title entered, until the time within which the land may be redeemed has expired. At any time after the time to redeem shall have expired, the purchaser may petition the court for an order directing the entry of a new certificate of title to him, and the court shall, after such notice as it may order, and hearing, grant and make an order directing the entry of such new certificate of title. [1907 c 250 § 72; RRS § 10701.]

65.12.580 Registration on inheritance. The heirs at law and devisees, upon the death of an owner of lands, and any estate or interest therein, registered pursuant to this chapter, on the expiration of thirty days after the entry of the decree of the superior court granting letters testamentary or of administration, or, in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree, of the superior court having jurisdiction, and of the will, if any, with the clerk of the superior court, in the county

in which the land lies, and make application to the court for an order for the entry of a new certificate of title. The court shall issue notice to the executor or administrator and all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may deem proper, to all whom it may concern; and after hearing, may direct the entry of a new certificate or certificates to the person or persons who appear to be entitled thereto as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner, in the superior courts, shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate in the superior court, or after the expiration of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorial upon their certificates, stating that the estate is in the course of settlement, and the court, after such notice as it may order, and a hearing, may grant the petition: *Provided, however,* That the liability of registered land to be sold for claims against the estate of the deceased, shall not in any way be diminished or changed. [1907 c 250 § 73; RRS § 10702.]

65.12.590 Probate court may direct sale of registered land. Nothing contained in this chapter shall include, affect or impair the jurisdiction of the superior court to order an executor, administrator or guardian to sell or mortgage registered land for any purpose for which such order may be granted in the case of unregistered land. The purchaser or mortgagee, taking a deed or mortgage executed in pursuance of such order of the superior court, shall be entitled to register his title, and to the entry of a new certificate of title or memorial of registration, upon application to the superior court, and upon filing in the office of the registrar of titles, an order of said court, directing the entry of such certificates. [1907 c 250 § 74; RRS § 10703.]

65.12.600 Trustees and receivers. An assignee for the benefit of creditors, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person appointed by the court, shall file in the office of the registrar of titles, the instrument or instruments by which he is vested with title, estate, or interest in any registered land, or a certified copy of an order of the court showing that such assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person, is authorized to deal with such land, estate or interest, and, if it is in the power of such person, he shall, at the same time, present to the registrar of titles, the owner's duplicate certificate of title; thereupon the registrar shall enter upon the register of titles, and the duplicate certificate, if presented, a memorial thereof, with a reference to such order or deed by its file number. Such memorial having been entered, the assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner or other person may, subject to the direction of the court, deal with or transfer such

land as if he were a registered owner. [1907 c 250 § 75; RRS § 10704.]

65.12.610 Eminent domain—Reversion. Whenever registered land, or any right or interest therein, is taken by eminent domain, the state or body politic, or corporate or other authority exercising such right shall pay all fees on account of any memorial or registration or entry of new certificates, or duplicate thereof, and fees for the filing of instruments required by this chapter to be filed. When, for any reason, by operation of law, land which has been taken for public use reverts to the owner from whom it was taken, or his heirs or assigns, the court, upon petition of the person entitled to the benefit of the reversion, after such notice as it may order, and hearing, may order the entry of a new certificate of title to him. [1907 c 250 § 76; RRS § 10705.]

65.12.620 Registration when owner's certificate withheld. In every case where the registrar of titles enters a memorial upon a certificate of title, or enters a new certificate of title, in pursuance of any instrument executed by the registered owner, or by reason of any instrument or proceeding which affects or devises the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented, the registrar of titles shall not enter a new certificate or make a memorial, but the person claiming to be entitled thereto may apply by petition to the court. The court may order the registered owner, or any person withholding the duplicate certificate, to present or surrender the same, and direct the entry of a memorial or new certificate upon such presentation or surrender. If, in any case, the person withholding the duplicate certificate is not amenable to the process of the court, or cannot be found, or if, for any reason, the outstanding owner's duplicate certificate cannot be presented or surrendered without delay, the court may, by decree, annul the same, and order a new certificate of title to be entered. Such new certificate, and all duplicates thereof, shall contain a memorial of the annulment of the outstanding duplicate. If in any case of an outstanding mortgagee's or lessee's duplicate certificate shall be withheld or otherwise dealt with, like proceedings may be had to obtain registration as in case of the owner's withholding or refusing to deliver the duplicate receipt. [1907 c 250 § 77; RRS § 10706.]

65.12.630 Reference to examiner of title. In all cases where, under the provisions of this chapter, application is made to the court for an order or decree, the court may refer the matter to one of the examiners of title for hearing and report, in like manner, as is herein provided for the reference of the application for registration. [1907 c 250 § 78; RRS § 10707.]

65.12.635 Examiner of titles. Examiners of titles shall, upon the request of the registrar of titles, advise him upon any act or duty pertaining to the conduct of his office, and shall, upon request, prepare the form of any memorial to be made or entered by the registrar of

titles. The examiner of titles shall have full power to administer oaths and examine witnesses involved in his investigation of titles. [1907 c 250 § 79; RRS § 10708.]

65.12.640 Registered instruments to contain names and addresses—Service of notices. Every writing and instrument required or permitted by this chapter to be filed for registration, shall contain or have endorsed upon it, the full name, place of residence and post office address of the grantee or other person requiring or claiming any right, title or interest under such instrument. Any change in residence or post office address of such person shall be endorsed by the registrar of titles in the original instrument, on receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates. All notices required by, or given in pursuance of the provisions of this chapter by the registrar of titles or by the court, after original registration, shall be served upon the person to be notified; if a resident of the state of Washington, as summons in civil actions are served; and proof of such service shall be made as on the return of a summons. All such notices shall be sent by mail, to the person to be notified, if not a resident of the state of Washington, and his residence and post office address, as stated in the certificate of title, or in any registered instrument under which he claims an interest. The certificate of the registrar of titles, or clerk of court, that any notice has been served, by mailing the same, as aforesaid, shall be conclusive proof of such notice: *Provided, however,* That the court may, in any case, order different or further service by publication or otherwise. [1907 c 250 § 80; RRS § 10709.]

65.12.650 Adverse claims—Procedure. Any person claiming any right or interest in registered land, adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this chapter for registering the same, make a statement in writing, setting forth fully his alleged right or interest and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land to which the right or interest is claimed. The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration, as an adverse claim; and the court, upon the petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall enter such decree thereon as equity and justice may require.

If the claim is adjudged to be invalid, its registration shall be canceled. The court may, in any case, award such costs and damages, including reasonable attorneys' fees, as it may deem just in the premises. [1907 c 250 § 81; RRS § 10710.]

65.12.660 Assurance fund. Upon the original registration of land under this chapter, and also upon the entry of the certificate showing title as registered owners in heirs or devisees, there shall be paid to the registrar of

titles, one-fortieth of one percent of the assessed value of the real estate on the basis of the last assessment for general taxation, as an assurance fund. [1973 1st ex.s. c 195 § 75; 1907 c 250 § 82; RRS § 10711.]

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

65.12.670 Investment of fund. All sums of money received by the registrar as provided for in RCW 65.12-.660, shall be forthwith paid by the registrar to the county treasurer of the county in which the land lies, for the purpose of an assurance fund, under the terms of this chapter; it shall be the duty of the county treasurer, whenever the amount on hand in said assurance fund is sufficient, to invest the same, principal and income, and report annually to the superior court of the same county the condition and income thereof; and no investment of the funds, or any part thereof, shall be made without the approval of said court, by order entered of record. Said fund shall be invested only in bonds or securities of the United States, or of one of the states of the United States, or of the counties or other municipalities of this state. [1907 c 250 § 83; RRS § 10712.]

65.12.680 Recoveries from fund. Any person sustaining loss or damage, through any omission, mistake, or misfeasance of the registrar of titles, or of any examiner of titles, or of any deputy, or by the mistake or misfeasance of the clerk of the court, or any deputy, in the performance of their respective duties, under the provisions of this chapter, and any person wrongfully deprived of any land or any interest therein, through the bringing of the same, under the provisions of this chapter, or by the registration of any other person as the owner of such land, or by any mistake, omission, or misdescription in any certificate or entry, or memorial, in the register of titles, or by any cancellation, and who, by the provisions of this chapter, is barred or precluded from bringing any action for the recovery of such land, or interest therein, or claim thereon, may bring an action against the treasurer of the county in which such land is situated, for the recovery of damages to be paid out of the assurance fund. [1907 c 250 § 84; RRS § 10713.]

65.12.690 Parties defendant—Judgment—Payment—Duties of county attorney. If such action be for recovery for loss or damage arising only through any omission, mistake or misfeasance of the registrar of titles or his deputies, or of any examiner of titles, or any clerk of court or his deputy, in the performance of their respective duties, under the provisions of this chapter, then the county treasurer shall be the sole defendant to such action; but if such action be brought for loss or damage arising only through the fraud or wrongful act of some person or persons other than the registrar or his deputies, the examiners of title, the clerk of the court or his deputies, or arising jointly through the fraud or wrongful act of such other person or persons, and the omission, mistakes or misfeasance of the registrar of titles or his deputies, the examiners of titles, the clerk of the court or his deputies, then such action shall be brought against both the county treasurer and such persons or persons

aforesaid. In all such actions, where there are defendants other than the county treasurer, and damages shall have been recovered, no final judgment shall be entered against the county treasurer, until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the indemnity [assurance] fund. Thereupon the court, being satisfied as to the truth of such return, shall order final judgment against the treasurer, for the amount of the execution and costs, or so much thereof as remains unpaid. The county treasurer shall, upon such order of the court and final judgment, pay the amount of such judgment out of the assurance fund. It shall be the duty of the county attorney to appear and defend all such actions. If the funds in the assurance funds at any time are insufficient to pay any judgment in full, the balance unpaid shall draw interest at the legal rate of interest, and be paid with such interest out of the first funds coming into said fund. [1907 c 250 § 85; RRS § 10714.]

65.12.700 When fund not liable—Maximum liability. The assurance fund shall not be liable in any action to pay for any loss, damage or deprivation occasioned by a breach of trust, whether expressed, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale, in a mortgage or a trust deed. Final judgment shall not be entered against the county treasurer in any action against this chapter to recover from the assurance fund for more than a fair market value of the real estate at the time of the last payment to the assurance fund, on account of the same real estate. [1907 c 250 § 86; RRS § 10715.]

65.12.710 Limitation of actions. No action or proceeding for compensation for or by reason of any deprivation, loss or damage occasioned or sustained as provided in this chapter, shall be made, brought or taken, except within the period of six years from the time when right to bring or take such action or proceeding first accrued; except that if, at any time, when such right of action first accrues, the person entitled to bring such action, or take such proceeding, is under the age of eighteen years, or insane, imprisoned, or absent from the United States in the service of the United States, or of this state, then such person, or anyone claiming from, by, or under him, may bring the action, or take the proceeding, at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired. [1971 ex.s. c 292 § 49; 1907 c 250 § 87; RRS § 10716.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

65.12.720 Proceeding to change records. No erasure, alteration or amendment shall be made upon the register of titles after the entry of the certificate of title, or a memorial thereon, and the attestation of the same by the registrar of titles, except by order of the court. Any registered owner, or other person in interest, may at any time apply by petition to the court, on the ground that

registered interests of any description, whether vested, contingent, expectant, or inchoate, have determined and ceased; or that new interests have arisen or been created, which do not appear upon the certificate; or that an error, omission or mistake was made in entering the certificate; or any memorial thereon, or any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered, has married, that the marriage has been terminated, or that a corporation which owned registered land has been dissolved, and has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after such notice as it may order, to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: *Provided, however,* That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent. [1907 c 250 § 88; RRS § 10717.]

65.12.730 Certificate subject of larceny—Penalty. Certificates of title or duplicate certificates entered under this chapter, shall be subjects of larceny, and anyone unlawfully stealing or carrying away any such certificate, shall, upon conviction thereof, be deemed guilty of grand larceny, and punished accordingly. [1907 c 250 § 89; RRS § 10718.]

65.12.740 Perjury—Penalty. Whoever knowingly swears falsely to any statement required by this chapter to be made under oath shall be guilty of perjury, and shall be liable to the statutory penalties therefor. [1907 c 250 § 90; RRS § 10719.]

65.12.750 Fraud—False entries—Penalty. Whoever fraudulently procures, or assists fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles, or other book kept in the registrar's office, or of any erasure or alteration in any entry in any such book, or in any instrument authorized by this chapter, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both such fine and imprisonment, in the discretion of the court. [1907 c 250 § 91; RRS § 10720.]

65.12.760 Forgery—Penalty. Whoever forges or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature or handwriting of

any officer of the registry office, in case where such officer is expressly or impliedly authorized to affix his signature; or forges or procures to be forged, or assists in forging, the name, signature or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, shall be guilty of a felony, and upon conviction shall be imprisoned in the penitentiary not exceeding ten years, or fined not exceeding one thousand dollars, or both fined and imprisoned, in the discretion of the court. [1907 c 250 § 92; RRS § 10721.]

65.12.770 Civil actions unaffected. No proceeding or conviction for any act hereby declared to be a felony, shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law, or in equity, against the person who has committed such act, or against his estate. [1907 c 250 § 93; RRS § 10722.]

65.12.780 Fees of clerk. On the filing of any application for registration, the applicant shall pay to the clerk of the court, in counties having more than forty thousand population, the sum of three dollars; and in all other counties, the sum of five dollars, which shall be in full of all clerk's fees and charges in such proceeding in behalf of the applicant. Any defendant, on entering his appearance, shall pay to the clerk of the court, the sum of three dollars, which shall be in full of all clerk's fees in behalf of such defendant. When any number of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this chapter shall be paid for by the party on whose application the order of publication is made, in addition to the fees above prescribed. The party at whose request any notice is issued, shall pay for the service of the same, except when sent by mail by the clerk of court, or the registrar of titles. [1907 c 250 § 94; RRS § 10723.]

65.12.790 Fees of registrar. The fees to be paid to the registrar of titles shall be as follows:

(1) At or before the time of filing of the certified copy of the application with the registrar, the applicant shall pay, to the registrar, on all land having an assessed value, exclusive of improvements, of one thousand dollars or less, thirty-one and one-quarter cents on each one thousand dollars, or major fraction thereof, of the assessed value of said land, additional.

(2) For granting certificates of title, upon each applicant, and registering the same, two dollars.

(3) For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the instruments connected therewith, and the issuance and registration of the new certificate of title, ten dollars.

(4) When the land transferred is held upon any trust, condition, or limitation, an additional fee of three dollars.

(5) For entry of each memorial on the register, including the filing of all instruments and papers connected therewith, and endorsements upon duplicate certificates, three dollars.

(6) For issuing each additional owner's duplicate certificate, mortgagee's duplicate certificate, or lessee's duplicate certificate, three dollars.

(7) For filing copy of will, with letters testamentary, or filing copy of letters of administration, and entering memorial thereof, two dollars and fifty cents.

(8) For the cancellation of each memorial, or charge, one dollar.

(9) For each certificate showing the condition of the register, one dollar.

(10) For any certified copy of any instrument or writing on file in his office, the same fees now allowed by law to county clerks and county auditors for like service.

(11) For any other service required, or necessary to carry out this chapter, and not hereinbefore itemized, such fee or fees as the court shall determine and establish.

(12) For registration of each mortgage and issuance of duplicate of title a fee of five dollars; for each deed of trust and issuance of duplicate of title a fee of eight dollars. [1973 1st ex.s. c 195 § 76; 1973 c 121 § 2; 1907 c 250 § 95; RRS § 10724.]

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

65.12.800 Disposition of fees. One-half of all fees provided for in RCW 65.12.790(1), shall be collected by the registrar, and paid to the county treasurer of the county in which the fees are paid, to be used for the current expenses of the county; and all the remaining fees provided for in said section, and all the subdivisions thereof, shall be collected by the registrar, and applied the same as the other fees of his office; but his salary as county clerk or county auditor, as now provided by law, shall not be increased on account of the additional duties, or by reason of the allowance of additional fees provided for herein; and the said registrar, as such, shall receive no salary. [1907 c 250 § 96; RRS § 10725.]

Chapter 65.16

LEGAL PUBLICATIONS

Sections

65.16.010	Weekly publication—How made.
65.16.020	Qualifications of legal newspaper.
65.16.030	Affidavit of publication—Presumption.
65.16.040	Legal publications to be approved—Order of approval.
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65.16.060	Choice of newspapers.
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65.16.130	Publication of official notices by radio or television—Restrictions.
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65.16.150	Proof of publication by radio or television.

65.16.160 Publication of ordinances.

Civil procedure, legal publication generally: Chapter 4.28 RCW.
Corporate seals, effect of absence from instrument: RCW 64.04.105.
Powers of appointment: Chapter 64.24 RCW.

65.16.010 Weekly publication—How made. The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published. [1893 c 127 § 27; RRS § 253.]

65.16.020 Qualifications of legal newspaper. The qualifications of a legal newspaper are that such newspaper shall have been published regularly, at least once a week, in the English language, as a newspaper of general circulation, in the city or town where the same is published at the time of application for approval, for at least six months prior to the date of such application; shall be compiled either in whole or in part in an office maintained at the place of publication; shall contain news of general interest as contrasted with news of interest primarily to an organization, group or class; and shall hold a second class mailing permit: *Provided*, That in case of the consolidation of two or more newspapers, such consolidated newspaper shall be considered as qualified if either or any of the papers so consolidated would be a qualified newspaper at the date of such legal publication, had not such consolidation taken place: *Provided*, That this section shall not disqualify as a legal newspaper any publication which, prior to June 8, 1961, was adjudged a legal newspaper, so long as it continues to meet the requirements under which it qualified. [1961 c 279 § 1; 1941 c 213 § 3; 1921 c 99 § 1; Rem. Supp. 1941 § 253-1. Prior: 1917 c 61 § 1.]

65.16.030 Affidavit of publication—Presumption. All legal and other official notices shall be published in a legal newspaper as herein defined, and the affidavit of publication shall state that the newspaper has been approved as a legal newspaper by order of the superior court of the county in which it is published, and shall be prima facie evidence of that fact. Wherever a legal notice, publication, advertisement or other official notice is required to be published by any statute or law of the state of Washington, the proof of such publication shall be the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper which published said notice. [1953 c 233 § 1; 1941 c 213 § 4; 1921 c 99 § 2; Rem. Supp. 1941 § 253-2.]

65.16.040 Legal publications to be approved—Order of approval. Sixty days from and after the date *this act becomes effective, a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding, or other official document now or hereafter required by law to be published, shall be a newspaper which has been approved as a legal newspaper by order of the superior court of the county in which such newspaper is published. Such order may be entered without notice upon presentation of a petition by or on behalf of the publisher, setting forth the qualifications of the

newspaper as required by *this act, and upon evidence satisfactory to the court that such newspaper is so qualified. [1941 c 213 § 1; Rem. Supp. 1941 § 253a.]

***Reviser's note:** (1) The language "this act" appears in 1941 c 213 codified as RCW 65.16.020 through 65.16.080.

(2) The effective date of this act is midnight June 11, 1941; see preface 1941 session laws.

65.16.050 Revocation of approval—Notice. An order of approval of a newspaper shall remain effective from the time of the entry thereof until the approval be terminated by a subsequent order of the court, which may be done whenever it shall be brought to the attention of the court that the newspaper is no longer qualified as a legal newspaper, and after notice of hearing issued by the clerk and served upon the publisher, at least ten days prior to the date of hearing, by delivering a copy of such notice to the person in charge of the business office of the publisher, or if the publisher has no business office at the time of service, by mailing a copy of such notice addressed to the publisher at the place of publication alleged in the petition for approval. [1941 c 213 § 2; Rem. Supp. 1941 § 253b.]

65.16.060 Choice of newspapers. Any summons, citation, notice of sheriff's sale, or legal advertisement of any description, the publication of which is now or may be hereafter required by law, may be published in any daily or weekly legal newspaper published in the county where the action, suit or other proceeding is pending, or is to be commenced or had, or in which such notice, summons, citation, or other legal advertisement is required to be given: *Provided, however,* That if there be more than one legal newspaper in which any such legal notice, summons, citation or legal advertisement might lawfully be published, then the plaintiff or moving party in the action, suit or proceeding shall have the exclusive right to designate in which of such qualified newspapers such legal notice, summons, citation, notice of sheriff's sale or other legal advertisement shall be published. [1941 c 213 § 6; 1921 c 99 § 5; Rem. Supp. 1941 § 253-5.]

65.16.070 List posted in clerk's office. Publications commenced in a legal newspaper, *when this act takes effect, may be completed in that newspaper notwithstanding any failure to obtain an order of approval under *this act, and notwithstanding an order of termination of approval prior to completion of publication. The clerk of the superior court of each county shall post and keep posted in a prominent place in his office a list of the newspapers published in that county which are approved as legal newspapers. [1941 c 213 § 7; RRS § 253-5a.]

***Reviser's note:** "this act", "when this act takes effect", see note following RCW 65.16.040.

65.16.080 Scope of provisions. The provisions of *this act shall not apply in counties where no newspaper has been published for a period of one year prior to the publication of such legal or other official notices. [1941 c 213 § 5; 1921 c 99 § 3; Rem. Supp. 1941 § 253-3.]

***Reviser's note:** "this act", see note following RCW 65.16.040.

65.16.091 Rates for legal notices. The rate charged by a newspaper for legal notices shall not exceed the national advertising rate extended by the newspaper to all general advertisers and advertising agencies in its published rate card. [1977 c 34 § 3.]

65.16.095 Rates for political candidates. The rate charged by a newspaper for advertising in relation to candidates for political office shall not exceed the national advertising rate extended to all general advertisers and advertising agencies in its published rate card. [1955 c 186 § 2.]

Severability—1955 c 186: "If any section of this act shall be found unconstitutional it shall not invalidate the remaining section." [1955 c 186 § 3.] This applies to RCW 65.16.090 and 65.16.095.

Political advertising: RCW 29.85.270, 29.85.280.

65.16.100 Omissions for Sundays and holidays. Where any law or ordinance of any incorporated city or town in this state provides for the publication of any form of notice or advertisement for consecutive days in a daily newspaper, the publication of such notice on legal holidays and Sundays may be omitted without in any manner affecting the legality of such notice or advertisement: *Provided,* That the publication of the required number of notices is complied with. [1921 c 99 § 6; RRS § 253-6.]

65.16.110 Affidavit to cover payment of fees. The affidavit of publication of all notices required by law to be published shall state the full amount of the fee charged for such publication and that the fee has been paid in full. [1921 c 99 § 7; RRS § 253-7.]

65.16.120 Payment of fees in advance, on demand. When, by law, any publication is required to be made by an officer of any suit, process, notice, order or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer shall be compelled to make publication thereof. [Code 1881 § 2092; 1869 p 373 § 14; RRS § 504.]

65.16.130 Publication of official notices by radio or television—Restrictions. Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement publication thereof by radio or television broadcast or both when, in his judgment, the public interest will be served thereby: *Provided,* That the time, place and nature of such notice only be read or shown with no reference to any person by name then a candidate for political office, and that such broadcasts shall be made only by duly employed personnel of the station from which such broadcasts emanate, and that notices by political subdivisions may be made only by stations situated within the county of origin of the legal notice. [1961 c 85 § 1; 1951 c 119 § 1.]

65.16.140 Broadcaster to retain copy or transcription. Each radio or television station broadcasting any

legal notice or notice of event shall for a period of six months subsequent to such broadcast retain at its office a copy or transcription of the text of the notice as actually broadcast which shall be available for public inspection. [1961 c 85 § 2; 1951 c 119 § 2.]

65.16.150 Proof of publication by radio or television. Proof of publication of legal notice or notice of event by radio or television broadcast shall be by affidavit of the manager, an assistant manager or a program director of the station broadcasting the same. [1961 c 85 § 3; 1951 c 119 § 3.]

65.16.160 Publication of ordinances. (1) Whenever any county, city, or town is required by law to publish legal notices containing the full text of any proposed or adopted ordinance in a newspaper, the county, city, or town may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:

- (a) The name of the county, city, or town;
- (b) The formal identification or citation number of the ordinance;
- (c) A descriptive title;
- (d) A section-by-section summary;
- (e) Any other information which the county, city, or town finds is necessary to provide a complete summary; and
- (f) A statement that the full text will be mailed upon request.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains provisions regarding taxation or penalties or contains legal descriptions of real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering more than one street address, the street addresses of the four corners of the area described shall meet this requirement.

(3) The full text of any ordinance which is summarized by publication under this section shall be mailed without charge to any person who requests the text from the adopting county, city, or town. [1977 c 34 § 4.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

66.04	Definitions.
66.08	Liquor control board—General provisions.
66.12	Exemptions.
66.16	State liquor stores.
66.20	Liquor permits.
66.24	Licenses—Stamp taxes.
66.28	Miscellaneous regulatory provisions.
66.32	Search and seizure.
66.36	Abatement proceedings.
66.40	Local option.
66.44	Enforcement—Penalties.
66.98	Construction.

Alcoholics, private establishments: Chapter 71.12 RCW.

Alcoholism and intoxication treatment, uniform act: Chapter 70.96A RCW.

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

Chapter 66.04 DEFINITIONS

Sections

66.04.010	Definitions.
66.04.011	"Public place" not to include certain parks and picnic areas.

66.04.010 Definitions. In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(2) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title any such beverage, including ale, stout and porter, containing more than four percent of alcohol by weight shall be referred to as "strong beer."

(3) "Brewer" means any person engaged in the business of manufacturing beer and malt liquor.

(4) "Board" means the liquor control board, constituted under this title.

(5) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal,

benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(6) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(7) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to sections 10030-10038, Remington's Revised Statutes.

(8) "Distiller" means a person engaged in the business of distilling spirits.

(9) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to sections 10126-10146, Remington's Revised Statutes.

(10) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(11) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

(12) "Fund" means 'liquor revolving fund.'

(13) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: *Provided further*, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(14) "Imprisonment" means confinement in the county jail.

(15) "Interdicted person" means a person declared an habitual drunkard pursuant to sections 1708-1715, Remington's Revised Statutes, or a person to whom the sale of liquor is prohibited by an order of interdiction filed with the board pursuant to this title.

(16) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise

intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(17) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(18) "Malt liquor" means beer, strong beer, ale, stout and porter.

(19) "Package" means any container or receptacle used for holding liquor.

(20) "Permit" means a permit for the purchase of liquor under this title.

(21) "Person" means an individual, copartnership, association, or corporation.

(22) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to sections 10008–10025, Remington's Revised Statutes.

(23) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(24) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(25) "Regulations" means regulations made by the board under the powers conferred by this title.

(26) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(27) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state.

(28) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(29) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(30) "Store" means a state liquor store established under this title.

(31) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(32) "Vendor" means a person employed by the board as a store manager under this title.

(33) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(34) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(35) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

(36) "Beer wholesaler" means a person who buys beer from a brewer or brewery located either within or beyond the boundaries of the state for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(37) "Wine wholesaler" means a person who buys wine from a vintner or winery located either within or beyond the boundaries of the state for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent. [1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306–3. Formerly RCW 66.04.010 through 66.04.380.]

Reviser's note: (1) RRS §§ 10030–10038, referred to in subdivision (7), were repealed by 1923 c 16 § 39. Provisions currently regulating dentistry, see chapter 18.32 RCW.

(2) RRS §§ 10126–10146, referred to in subdivision (9), are codified, as amended, in chapter 18.64 RCW.

(3) RRS §§ 1708–1715, referred to in subdivision (15), were codified, as amended, in RCW 71.08.030 through 71.08.090, which were repealed by 1972 ex.s. c 122 § 26. Provisions currently relating to alcoholism treatment, see chapter 70.96A RCW. RRS § 1714 was repealed by 1929 c 31 § 1.

(4) RRS §§ 10008–10025, referred to in subdivision (22) are codified, as amended, in chapter 18.71 RCW; see also chapter 18.72 RCW.

Effective date—1969 ex.s. c 21: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.] This applies to RCW 66.04.010, 66.24.160, 66.24.200, 66.24.210, 66.24.230, 66.24.310, 66.28.025, 66.28.030, 66.28.040, 66.28.050, 66.24.204, 66.24.206, 82.08.150, and 82.08.160.

66.04.011 "Public place" not to include certain parks and picnic areas. "Public place" as defined in this title shall not include (a) any of those parks under the control of the state parks and recreation commission, nor, (b) parks and picnic areas adjacent to and held by the same ownership as licensed brewers and domestic wineries for

the consumption of beer and wine produced by the respective brewery or winery, as prescribed by regulation adopted by the board pursuant to chapter 34.04 RCW. [1977 ex.s. c 219 § 1; 1971 ex.s. c 208 § 3.]

Chapter 66.08
LIQUOR CONTROL BOARD—GENERAL PROVISIONS

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66.08.010 Title liberally construed. This entire title shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its

provisions shall be liberally construed for the accomplishment of that purpose. [1933 ex.s. c 62 § 2; RRS § 7306-2.]

66.08.012 Creation of board—Chairman—Quorum—Salary. There shall be a board, known as the "Washington state liquor control board," consisting of three members, to be appointed by the governor, with the consent of the senate, who shall each be paid an annual salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The governor may, in his discretion, appoint one of the members as chairman of the board, and a majority of the members shall constitute a quorum of the board. [1961 c 307 § 7; 1949 c 5 § 8; 1945 c 208 § 1; 1937 c 225 § 1; 1933 ex.s. c 62 § 63; Rem. Supp. 1949 § 7306-63. Formerly RCW 43.66.010.]

Severability—1945 c 5: RCW 66.98.080.

66.08.014 Terms of members—Vacancies—Principal office—Removal—Devotion of time to duties—Bond—Oath. (1) The members of the board to be appointed after December 2, 1948 shall be appointed for terms beginning January 15, 1949, and expiring as follows: One member of the board for a term of three years from January 15, 1949; one member of the board for a term of six years from January 15, 1949; and one member of the board for a term of nine years from January 15, 1949. Each of the members of the board appointed hereunder shall hold office until his successor is appointed and qualified. Upon the expiration of the term of any of the three members of the board appointed as aforesaid, each succeeding member of the board shall be appointed and hold office for the term of nine years. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the board shall impair the right of the remaining member or members to act, except as herein otherwise provided.

(2) The principal office of the board shall be at the state capitol, and it may establish such other offices as it may deem necessary.

(3) Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal shall disqualify such member for reappointment.

(4) Each member of the board shall devote his entire time to the duties of his office and no member of the board shall hold any other public office. Before entering upon the duties of his office, each of said members of the board shall enter into a surety bond executed by a surety company authorized to do business in this state,

payable to the state of Washington, to be approved by the governor in the penal sum of fifty thousand dollars conditioned upon the faithful performance of his duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the board. [1949 c 5 § 9; 1947 c 113 § 1; 1945 c 208 § 2; 1933 ex.s. c 62 § 64; Rem. Supp. 1949 § 7306-64. Formerly RCW 43.66.020.]

Severability—1949 c 5: RCW 66.98.080.

66.08.016 Employees of the board. The board may employ such number of employees as in its judgment are required from time to time. [1961 c 1 § 30; 1947 c 113 § 2; 1933 ex.s. c 62 § 65; Rem. Supp. 1947 § 7306-65. Formerly RCW 43.66.030.]

66.08.020 Liquor control board to administer. The administration of this title, including the general control, management and supervision of all liquor stores, shall be vested in the liquor control board, constituted under this title. [1933 ex.s. c 62 § 5; RRS § 7306-5.]

Annual report of liquor law violations by police courts: RCW 35.21.170.

Prosecuting attorney to make annual report of liquor law prosecutions: RCW 36.27.020.

66.08.022 Attorney general is general counsel of board—Duties—Assistants. The attorney general shall be the general counsel of the liquor control board and he shall institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of the provisions of this chapter and Title 66 RCW.

He shall assign such assistants as may be necessary to the exclusive duty of assisting the liquor control board in the enforcement of Title 66 RCW. [1961 ex.s. c 6 § 2; 1933 ex.s. c 62 § 66; RRS § 7306-66. Formerly RCW 43.66.140.]

Effective date—1961 ex.s. c 6: See note following RCW 66.08.170.

66.08.024 Annual audit—State auditor's duties—Additional audits—Costs—Public records. The state auditor shall audit the books, records, and affairs of the board annually: *Provided*, That the total annual cost of such audit shall not exceed the sum of ten thousand dollars. The board shall pay to the state treasurer for the credit of the state auditor, out of the liquor revolving fund, the sum of ten thousand dollars a year, or so much thereof as is necessary, to defray the costs of such audits. The board may provide for additional audits by certified public accountants the total annual cost of which shall not exceed the sum of five thousand dollars. All such audits shall be public records of the state. The payment of the audits provided for in this section shall be paid as provided in RCW 66.08.026 for other administrative expenses. [1961 ex.s. c 6 § 3; 1937 c 138 § 1; 1935 c 174 § 12; 1933 ex.s. c 62 § 71; RRS § 7306-71. Formerly RCW 43.66.150.]

Effective date—1961 ex.s. c 6: See note following RCW 66.08.170.

66.08.026 Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined. All administrative expenses of the board incurred on and after April 1, 1963 shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of establishing, leasing, maintaining, and operating state liquor stores and warehouses, legal services, annual or other audits, and other general costs of conducting the business of the board. The administrative expenses shall not, however, be deemed to include costs of liquor purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor, packaging and repackaging of liquor, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. [1963 c 239 § 1; 1961 ex.s. c 6 § 4. Formerly RCW 43.66.161.]

Severability—1963 c 239: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 239 § 2.] This applies to RCW 66.08.026 and 66.08.050.

66.08.028 Reports by board to governor and legislature. The board shall, from time to time, make reports to the governor covering such matters in connection with the administration and enforcement of this title as he may require, and the board shall prepare and forward to the governor annually, to be laid before the legislature, a report for the fiscal year containing:

- (1) A financial statement and balance sheet showing in general the condition of the business and its operation during the year;
- (2) A summary of all prosecutions for infractions and the results thereof;
- (3) General information and remarks; and
- (4) Any further information requested by the governor. [1977 c 75 § 79; 1955 c 182 § 1; 1935 c 174 § 13; 1933 ex.s. c 62 § 72; RRS § 7306-72. Formerly RCW 43.66.170.]

66.08.030 Regulations—Scope. (1) For the purpose of carrying into effect the provisions of this title according to their true intent or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and shall be filed in the office of the code reviser, and thereupon shall have the same force and effect as if incorporated in this title. Such regulations, together with a copy of this title, shall be published in pamphlets and shall be distributed as directed by the board.

(2) Without thereby limiting the generality of the provisions contained in subsection (1), it is declared that the power of the board to make regulations in the manner set out in that subsection shall extend to

(a) regulating the equipment and management of stores and warehouses in which state liquor is sold or kept, and prescribing the books and records to be kept therein and the reports to be made thereon to the board;

(b) prescribing the duties of the employees of the board, and regulating their conduct in the discharge of their duties;

(c) governing the purchase of liquor by the state and the furnishing of liquor to stores established under this title;

(d) determining the classes, varieties, and brands of liquor to be kept for sale at any store;

(e) prescribing, subject to RCW 66.16.080, the hours during which the state liquor stores shall be kept open for the sale of liquor;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each variety of liquor kept for sale under this title;

(g) prescribing an official seal and official labels and stamps and determining the manner in which they shall be attached to every package of liquor sold or sealed under this title, including the prescribing of different official seals or different official labels for different classes of liquor;

(h) providing for the payment by the board in whole or in part of the carrying charges on liquor shipped by freight or express;

(i) prescribing forms to be used for purposes of this title or the regulations, and the terms and conditions to be contained in permits and licenses issued under this title;

(j) prescribing the fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title, and prescribing the fees for anything done or permitted to be done under the regulations;

(k) prescribing the kinds and quantities of liquor which may be kept on hand by the holder of a special permit for the purposes named in the permit, regulating the manner in which the same shall be kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

(l) regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;

(m) prescribing the records of purchases or sales of liquor kept by the holders of licenses, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(n) prescribing the kinds and quantities of liquor for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

(o) prescribing the manner of giving and serving notices required by this title or the regulations, where not otherwise provided for in this title;

(p) regulating premises in which liquor is kept for export from the state, or from which liquor is exported, prescribing the books and records to be kept therein and the reports to be made thereon to the board, and providing for the inspection of the premises and the books, records and the liquor so kept;

(q) prescribing the conditions and qualifications requisite for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, prescribing the manner of licensing clubs in any municipality or other locality, and providing for the inspection of clubs;

(r) prescribing the conditions, accommodations and qualifications requisite for the obtaining of licenses to sell beer and wines, and regulating the sale of beer and wines thereunder;

(s) specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers shall deliver liquor within the state; and the time and periods when, and the manner, methods and means by which liquor may lawfully be conveyed or carried within the state;

(t) providing for the making of returns by brewers of their sales of beer shipped within the state, or from the state, showing the gross amount of such sales and providing for the inspection of brewers' books and records, and for the checking of the accuracy of any such returns;

(u) providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

(v) providing for the making of returns by any other liquor manufacturers, showing the gross amount of liquor produced or purchased, the amount sold within and exported from the state, and to whom so sold or exported, and providing for the inspection of the premises of any such liquor manufacturers, their books and records, and for the checking of any such return;

(w) providing for the giving of fidelity bonds by any or all of the employees of the board: *Provided*, That the premiums therefor shall be paid by the board;

(x) providing for the shipment by mail or common carrier of liquor to any person holding a permit and residing in any unit which has, by election pursuant to this title, prohibited the sale of liquor therein;

(y) prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board; and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

(z) seizing, confiscating and destroying all alcoholic beverages manufactured, sold or offered for sale within this state which do not conform in all respects to the standards prescribed by this title or the regulations of the board: *Provided*, Nothing herein contained shall be construed as authorizing the liquor board to prescribe, alter, limit or in any way change the present law as to the quantity or percentage of alcohol used in the manufacturing of wine or other alcoholic beverages. [1977 ex.s. c 115 § 1; 1971 c 62 § 1; 1943 c 102 § 1; 1933 ex.s. c 62 § 79; RRS § 7306-79. Formerly RCW 66.08.030 and 66.08.040.]

66.08.050 Powers of board in general. The board, subject to the provisions of this title and the regulations, shall

(1) determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) appoint in cities and towns and other communities, in which no state liquor store is located, liquor vendors. Such liquor vendors shall be agents of the board and be authorized to sell liquor to such persons, firms or corporations as provided for the sale of liquor from a state liquor store, and such vendors shall be subject to such additional rules and regulations consistent with this title as the board may require;

(3) establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business; and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;

(5) determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(8) require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor. [1975 1st ex.s. c 173 § 1; 1969 ex.s. c 178 § 1; 1963 c 239 § 3; 1935 c 174 § 10; 1933 ex.s. c 62 § 69; RRS § 7306-69.]

Severability—1975 1st ex.s. c 173: "If any phrase, clause, subsection, or section of this 1975 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1975 amendatory act without the phrase, clause, subsection, or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1975 1st ex.s. c 173 § 13.]

Effective date—1975 1st ex.s. c 173: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 173 § 14.]

66.08.055 Oaths may be administered and affidavits, declarations received. Every member of the board, and every employee authorized by the board to issue permits under this title may administer any oath and take and receive any affidavit or declaration required under this title or the regulations. [1933 ex.s. c 62 § 80; RRS § 7306-80. Formerly RCW 43.66.050.]

66.08.060 Board cannot advertise liquor—Advertising regulations. The board shall not advertise liquor in any form or through any medium whatsoever. The board shall have power to adopt any and all reasonable regulations as to the kind, character and location of advertising of liquor. [1933 ex.s. c 62 § 43; RRS § 7306-43.]

66.08.070 Purchase of liquor by board—Consignment not prohibited. (1) Every order for the purchase of liquor shall be authorized by the board, and no order for liquor shall be valid or binding unless it is so authorized and signed by the board or its authorized designee.

(2) A duplicate of every such order shall be kept on file in the office of the board.

(3) All cancellations of such orders made by the board shall be signed in the same manner and duplicates thereof kept on file in the office of the board. Nothing in this title shall be construed as preventing the board from accepting liquor on consignment. [1973 1st ex.s. c 209 § 1; 1933 ex.s. c 62 § 67; RRS § 7306-67.]

Severability—1973 1st ex.s. c 209: "If any phrase, clause, subsection or section of this 1973 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1973 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1973 1st ex.s. c 209 § 21.]

Effective date—1973 1st ex.s. c 209: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 209 § 22.]

The foregoing annotations apply to RCW 66.08.070, 66.16.040, 66.20.160-66.20.210, 66.24.010, 66.24.025, 66.24.120, 66.24.206, 66.24.270, 66.24.330, 66.24.370, 66.24.380, 66.24.500, 66.44.320, and to the repeal of RCW 66.44.230.

66.08.075 Officers, employees not to represent manufacturer, wholesaler in sale to board. No official or employee of the liquor control board of the state of Washington shall, during his term of office or employment, or for a period of two years immediately following the termination thereof, represent directly or indirectly any manufacturer or wholesaler of liquor in the sale of liquor to the board. [1937 c 217 § 5 (adding new section 42-A to 1933 ex.s. c 62); RRS § 7306-42A. Formerly RCW 43.66.040.]

66.08.080 Interest in manufacture or sale of liquor prohibited. No member of the board and no employee of the board shall have any interest, directly or indirectly, in the manufacture of liquor or in any liquor sold under this title, or derive any profit or remuneration from the sale of liquor, other than the salary or wages payable to him in respect of his office or position, and shall receive no gratuity from any person in connection with such business. [1933 ex.s. c 62 § 68; RRS § 7306-68.]

66.08.090 Sale of liquor by employees of board. No employee shall sell liquor in any other place, nor at any other time, nor otherwise than as authorized by the board under this title and the regulations. [1933 ex.s. c 62 § 31; RRS § 7306-31.]

66.08.100 Jurisdiction of action against board—Immunity from personal liability of members. No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the board or any member thereof for anything done or omitted to be done in or arising out of the performance of his or their duties under this title. Neither the board nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the board or any employee of the board in the performance of his duties and in the administration of this title. [1935 c 174 § 9 (adding new section 62-A to 1933 ex.s. c 62); RRS § 7306-62A. Formerly RCW 66.08.100 and 66.08.110.]

66.08.120 Preemption of field by state—Exception. No municipality or county shall have power to license the sale of, or impose an excise tax upon, liquor as defined in this title, or to license the sale or distribution thereof in any manner; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof, as defined in this title, shall be suspended and shall be of no further effect: *Provided*, That municipalities and counties shall have power to adopt police ordinances and regulations not in conflict with this title or with the regulations made by the board. [1933 ex.s. c 62 § 29; RRS § 7306-29.]

66.08.130 Inspection of books and records—Goods possessed or shipped—Penalty for refusal. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books and records of

- (1) any manufacturer;
- (2) any license holder;
- (3) any drug store holding a permit to sell on prescriptions;
- (4) the freight and express books and records and all waybills, bills of lading, receipts and documents in the possession of any common carrier doing business within the state, containing any information or record relating to any goods shipped or carried, or consigned or received for shipment or carriage within the state. Every common carrier, and every owner or officer or employee of such common carrier, who neglects or refuses to produce and submit for inspection any book, record or document referred to in this section when requested to do so by the board or by a person so appointed by it shall be guilty of a violation of this title. [1933 ex.s. c 62 § 56; RRS § 7306-56.]

66.08.140 Inspection of books and records—Financial dealings—Penalty for refusal. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books, documents and records

of any person lending money to or in any manner financing any license, holder or applicant for license insofar as such books, documents and/or records pertain to the financial transaction involved. Every person who neglects or refuses to produce and submit for inspection any book, record or document as required by this section when requested to do so by the board or by a person duly appointed by it shall be guilty of a violation of this title. [1945 c 48 § 1 (adding new section 56-A to 1933 ex.s. c 62); RRS § 7306-56A.]

66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Contested case—Opportunity for hearing—Summary suspension. The action, order or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be a contested case and subject to the applicable provisions of chapter 34.04 RCW as amended by *this 1967 amendatory act.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to thirty days without a prior hearing if it finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in its order; and proceedings for revocation or other action must be promptly instituted and determined. [1967 c 237 § 23; 1933 ex.s. c 62 § 62 RRS § 7306-62.]

*Reviser's note: "this 1967 amendatory act" [1967 c 237], see note following RCW 34.04.130.

66.08.160 Acquisition of warehouse authorized. The Washington state liquor board and the state finance committee are hereby authorized to lease or purchase or acquire a site and erect a warehouse building in the city of Seattle, and for that purpose may borrow money and may issue bonds in an amount not to exceed one million five hundred thousand dollars to be amortized from liquor revenues over a period of not to exceed ten years. [1947 c 134 § 1; No RRS.]

66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable. There shall be a fund, known as the "liquor revolving fund", which shall consist of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board. The state

treasurer shall be custodian of the fund. All moneys received by the board or any employee thereof, except for change funds and an amount of petty cash as fixed by the board within the authority of law shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the liquor revolving fund. Disbursements from the revolving fund shall be on authorization of the board or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the liquor revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. [1961 ex.s. c 6 § 1; 1933 ex.s. c 62 § 73; RRS § 7306-73. Formerly RCW 43.66.060.]

Transfer of liquor revolving fund to state treasurer—Outstanding obligations. "On June 30, 1961, the Washington state liquor control board shall deliver and transfer to the state treasurer, as custodian, all moneys and accounts which comprise the liquor revolving fund, except change funds and petty cash, and the state treasurer shall assume custody thereof. All obligations outstanding as of June 30, 1961 shall be paid out of the liquor revolving fund." [1961 ex.s. c 6 § 5.]

Effective date—1961 ex.s. c 6: "This act shall take effect on June 30, 1961." [1961 ex.s. c 6 § 7.] This applies to the foregoing footnote and to the 1961 amendments codified in RCW 66.08.022, 66.08.024, 66.08.026.

66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and department of social and health services. Moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: *Provided*, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title: *And provided further*, That all license fees, penalties and forfeitures derived under this act from class H licenses or class H licensees shall every three months be disbursed by the board to the University of Washington and to Washington State University for medical and biological research only, in such proportions as shall be determined by the board after consultation with the heads of said state institutions: *And provided further*, That when the allocations in any biennium to the University of Washington and Washington State University shall amount to a total of one million dollars, the entire allocation for the remainder of the biennium shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96.085, as now or hereafter amended: *And provided further*, That twenty percent of the total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.340, 66.24.350, 66.24.360, and 66.24.370, as such sections are now or hereafter amended, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96.085, as now or hereafter amended. The director of financial management shall prescribe suitable accounting procedure to insure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for. [1979 c 151 § 166; 1967 ex.s. c 75 § 1;

1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

Effective date—1967 ex.s. c 75: "The effective date of this 1967 amendatory act is July 1, 1967." [1967 ex.s. c 75 § 8.] This applies to the 1967 amendments to RCW 66.08.180 and 66.24.320 through 66.24.370.

Severability—1949 c 5: RCW 66.98.080.

Distribution for state toxicological lab: See note following RCW 68.08.107.

66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties and cities. When excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

Fifty percent to the general fund of the state, ten percent to the counties of the state, and forty percent to the incorporated cities and towns of the state. [1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

66.08.200 Liquor revolving fund—Computation for distribution to counties—"Unincorporated area" defined. With respect to the ten percent share coming to the counties, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible county shall be determined by a division among the eligible counties according to the relation which the population of the unincorporated area of such eligible county, as last determined by the office of financial management, bears to the population of the total combined unincorporated areas of all eligible counties, as determined by the office of financial management: *Provided*, That no county in which the sale of liquor is forbidden in the unincorporated area thereof as the result of an election shall be entitled to share in such distribution. "Unincorporated area" means all that portion of any county not included within the limits of incorporated cities and towns.

When a special county census has been conducted for the purpose of determining the population base of a county's unincorporated area for use in the distribution of liquor funds, the census figure shall become effective for the purpose of distributing funds as of the official census date once the census results have been certified by the office of financial management and officially submitted to the office of the secretary of state. [1979 c 151 § 167; 1977 ex.s. c 110 § 2; 1957 c 175 § 7. Prior: 1955 c 109 § 3; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.100.]

Population determinations, office of financial management: Chapter 43.62 RCW.

66.08.210 Liquor revolving fund—Computation for distribution to cities. With respect to the forty percent share coming to the incorporated cities and towns, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible city or town shall be determined by a division among the eligible cities and towns within the state ratably on the basis of population as last determined by the office of financial management: *And provided*, That no city or town in which the sale of liquor is forbidden as the result of an election shall be entitled to any share in such distribution. [1979 c 151 § 168; 1977 ex.s. c 110 § 3; 1957 c 175 § 8. Prior: 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.110.]

Allocation of state funds on population basis: RCW 43.62.020, 43.62.030.

Determining population of territory annexed to city: RCW 35.13.260.

66.08.220 Liquor revolving fund—Separate account of part of gross sales to class H licensees, distribution. The board shall set aside in a separate account in the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to class H licensees; and the moneys in said separate account shall be distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210: *Provided, however*, That no election unit in which the sale of liquor under class H licenses is unlawful shall be entitled to share in the distribution of moneys from such separate account. [1949 c 5 § 11 (adding new section 78-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-78A. Formerly RCW 43.66.130.]

Severability—1949 c 5: RCW 66.98.080.

Chapter 66.12 EXEMPTIONS

Sections

66.12.010	Wine or beer manufactured for home use.
66.12.020	Sales of liquor to board.
66.12.030	Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected.
66.12.060	Pharmaceutical preparations, patent medicines, denatured alcohol.
66.12.070	Medicinal, culinary and toilet preparations not usable as beverages—Sample and analysis.
66.12.110	Bringing alcoholic beverages into United States duty free for personal use—Payment of markup and tax on excess amounts—Class H license proximate to border.
66.12.120	Bringing alcoholic beverages into state from another state—Payment of markup and tax.

66.12.010 Wine or beer manufactured for home use. Nothing in this title shall apply to wine or beer manufactured in any home for consumption therein, and not for sale. [1955 c 39 § 1; 1933 ex.s. c 62 § 32; RRS § 7306-32.]

66.12.020 Sales of liquor to board. Nothing in this title shall apply to or prevent the sale of liquor by any person to the board. [1933 ex.s. c 62 § 48; RRS § 7306-48.]

66.12.030 Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected. (1) Nothing in this title shall prevent any person licensed to manufacture liquor from keeping liquor in his warehouse or place of business.

(2) Nothing in this title shall prevent the transshipment of liquor in interstate and foreign commerce; but no person shall import liquor into the state from any other state or country, except, as herein otherwise provided, for use or sale in the state, except the board.

(3) Every provision of this title which may affect transactions in liquor between a person in this state and a person in another state or in a foreign country shall be construed to affect such transactions so far only as the legislature has power to make laws in relation thereto. [1933 ex.s. c 62 § 49; RRS § 7306-49. Formerly RCW 66.12.030, 66.12.040 and 66.12.050.]

66.12.060 Pharmaceutical preparations, patent medicines, denatured alcohol. Nothing in this title shall apply to or prevent the sale, purchase or consumption

(1) of any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopoeia of the United States, or the dispensatory of the United States; or

(2) of any proprietary or patent medicine; or

(3) of wood alcohol or denatured alcohol, except in the case of the sale, purchase, or consumption of wood alcohol or denatured alcohol for beverage purposes, either alone or combined with any other liquid or substance. [1933 ex.s. c 62 § 50; RRS § 7306-50.]

Sale of liquor by pharmacists: RCW 18.64.243.

66.12.070 Medicinal, culinary and toilet preparations not usable as beverages—Sample and analysis. (1) Where a medicinal preparation contains liquor as one of the necessary ingredients thereof, and also contains sufficient medication to prevent its use as an alcoholic beverage, nothing in this title shall apply to or prevent its composition or sale by a druggist when compounded from liquor purchased by the druggist under a special permit held by him, nor apply to or prevent the purchase or consumption of the preparation by any person for strictly medicinal purposes.

(2) Where a toilet or culinary preparation, that is to say, any perfume, lotion, or flavoring extract or essence, contains liquor and also contains sufficient ingredient or medication to prevent its use as a beverage, nothing in this title shall apply to or prevent the sale or purchase of that preparation by any druggist or other person who manufactures or deals in the preparation, nor apply to or prevent the purchase or consumption of the preparation by any person who purchases or consumes it for any toilet or culinary purpose.

(3) In order to determine whether any particular medicinal, toilet, or culinary preparation referred to in this section contains sufficient ingredient or medication to prevent its use as an alcoholic beverage, the board may cause a sample of the preparation, purchased or obtained from any person whomsoever, to be analyzed by an analyst appointed or designated by the board; and if

it appears from a certificate signed by the analyst that he finds the sample so analyzed by him did not contain sufficient ingredient or medication to prevent its use as an alcoholic beverage, the certificate shall be conclusive evidence that the preparation, the sample of which was so analyzed, is not a preparation the sale or purchase of which is permitted by this section. [1933 ex.s. c 62 § 51; RRS § 7306-51. Formerly RCW 66.12.070, 66.12.080 and 66.12.090.]

66.12.110 Bringing alcoholic beverages into United States duty free for personal use—Payment of markup and tax on excess amounts—Class H license proximate to border. A person twenty-one years of age or over may bring into the state from without the United States, free of tax and markup, for his personal or household use such alcoholic beverages as have been declared and permitted to enter the United States duty free under federal law.

Such entry of alcoholic beverages in excess of that herein provided may be authorized by the board upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a Washington state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.04 RCW for the purpose of carrying out the provisions of this section. The board may issue a class H license to a charitable or nonprofit corporation of the state of Washington, the majority of the officers and directors of which are United States citizens and the minority of the officers and directors of which are citizens of the Dominion of Canada, and where the location of the premises for such class H license is not more than ten miles south of the border between the United States and the province of British Columbia. [1975-'76 2nd ex.s. c 20 § 1. Prior: 1975 1st ex.s. c 256 § 1; 1975 1st ex.s. c 173 § 2; 1967 c 38 § 1.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.12.120 Bringing alcoholic beverages into state from another state—Payment of markup and tax. Notwithstanding any other provision of Title 66 RCW, a person twenty-one years of age or over may be authorized by the board to bring into the state of Washington from another state a reasonable amount of alcoholic beverages for personal or household use only upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.04 RCW for the purpose of carrying into effect the provisions of this section. [1975 1st ex.s. c 173 § 3.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Chapter 66.16

STATE LIQUOR STORES

Sections

66.16.010	Board may establish—Standard as to prices—Prices in special instances.
66.16.030	Vendor to be in charge.
66.16.040	Sales of liquor by employees—Identification cards—Permit holders—Sales for cash.
66.16.050	Sale of beer and wine to person licensed to sell.
66.16.060	Sealed packages may be required, exception.
66.16.070	Liquor cannot be opened or consumed on store premises.
66.16.080	Sunday closing.
66.16.090	Record of individual purchases confidential—Penalty for disclosure.

66.16.010 Board may establish—Standard as to prices—Prices in special instances. (1) There shall be established at such places throughout the state as the liquor control board, constituted under this title, shall deem advisable, stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this title and the regulations: *Provided*, That the prices of all liquor shall be fixed by the board from time to time so that the net annual revenue received by the board therefrom shall not exceed thirty-five percent.

(2) The liquor control board may, from time to time, fix the special price at which pure ethyl alcohol may be sold to physicians and dentists and institutions regularly conducted as hospitals, for use or consumption only in such hospitals; and may also fix the special price at which pure ethyl alcohol may be sold to schools, colleges and universities within the state for use for scientific purposes. Regularly conducted hospitals may have right to purchase pure ethyl alcohol on a federal permit.

(3) The liquor control board may also fix the special price at which pure ethyl alcohol may be sold to any department, branch or institution of the state of Washington, federal government, or to any person engaged in a manufacturing or industrial business or in scientific pursuits requiring alcohol for use therein.

(4) The liquor control board may also fix a special price at which pure ethyl alcohol may be sold to any private individual, and shall make regulations governing such sale of alcohol to private individuals as shall promote, as nearly as may be, the minimum purchase of such alcohol by such persons. [1939 c 172 § 10; 1937 c 62 § 1; 1933 ex.s. c 62 § 4; RRS § 7306-4. Formerly RCW 66.16.010 and 66.16.020.]

66.16.030 Vendor to be in charge. The sale of liquor at each state liquor store shall be conducted by a person employed under this title to be known as a "vendor," who shall, together with the employees under his direction, under the regulations of the board, be responsible for the carrying out of this title and the regulations, so far as they relate to the conduct of the store and the sale of liquor thereat. [1933 ex.s. c 62 § 6; RRS § 7306-6.]

66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash. Except as otherwise provided by law, an employee in a

state liquor store or agency may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of his age, such person shall be required to present any one of the following officially issued cards of identification which shows his correct age and bears his signature and photograph:

(1) Liquor control authority card of identification of any state.

(2) Driver's license of any state or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(3) United States active duty military identification.

(4) Passport.

The board may adopt such regulations as it deems proper covering the acceptance of such cards of identification.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash. [1979 c 158 § 217; 1973 1st ex.s. c 209 § 3; 1971 ex.s. c 15 § 1; 1959 c 111 § 1; 1933 ex.s. c 62 § 7; RRS § 7306-7.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 15 § 8.] This applies to RCW 66.16.040, 66.20.160, 66.20.170, 66.20.180, 66.20.190, 66.20-200 and 66.20.210.

Renewal driver's license accepted as proper identification: RCW 46.20.185.

66.16.050 Sale of beer and wine to person licensed to sell. An employee may sell beer and wines to any licensee holding a license to sell under this title in accordance with the terms of said license. [1933 ex.s. c 62 § 8; RRS § 7306-8.]

66.16.060 Sealed packages may be required, exception. The board may in its discretion by regulation prescribe that any or all liquors other than malt liquor shall be delivered to any purchaser, at a state liquor store only in a package sealed with the official seal. [1943 c 216 § 1; 1933 ex.s. c 62 § 9; RRS § 7306-9.]

66.16.070 Liquor cannot be opened or consumed on store premises. No employee in a state liquor store shall open or consume, or allow to be opened or consumed any liquor on the store premises. [1933 ex.s. c 62 § 10; RRS § 7306-10.]

66.16.080 Sunday closing. No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor, on Sunday. [1933 ex.s. c 62 § 11; RRS § 7306-11.]

66.16.090 Record of individual purchases confidential—Penalty for disclosure. All records whatsoever of the board showing purchases by any individual of liquor shall be deemed confidential, and, except subject to audit by the state auditor, shall not be permitted to be inspected by any person whatsoever, except by employees

of the board to the extent permitted by the regulations; and no member of the board and no employee whatsoever shall give out any information concerning such records and neither such records nor any information relative thereto which shall make known the name of any individual purchaser shall be competent to be admitted as evidence in any court or courts except in prosecutions for illegal possession of and/or sale of liquor. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1933 ex.s. c 62 § 89; RRS § 7306-89.]

Chapter 66.20 LIQUOR PERMITS

Sections

66.20.010	Permits classified—Issuance—Fees.
66.20.020	Permits not transferable—False name or address prohibited—Sacramental liquor, wine.
66.20.040	Applicant must sign permit.
66.20.060	Duration of permits.
66.20.070	Suspension or cancellation of permits.
66.20.080	Surrender of suspended or canceled permit—New permit, when.
66.20.090	Taking up permits wrongfully presented.
66.20.100	Physician may prescribe or administer liquor—Penalty.
66.20.110	Dentist may administer liquor—Penalty.
66.20.120	Hospitals, etc., may administer liquor—Penalty for violation.
66.20.130	Permits denied interdicted persons.
66.20.135	Cancellation of liquor permit—Interdiction by decree.
66.20.137	Revocation of interdiction.
66.20.140	Limitation on application after cancellation or suspension.
66.20.150	Purchases prohibited under canceled, suspended permit or under another's permit.
66.20.160	"Card of identification", "licensee", "store employee" defined for certain purposes.
66.20.170	Card of identification may be accepted as identification card and evidence of legal age.
66.20.180	Card of identification to be presented on request of licensee.
66.20.190	Identification card holder may be required to sign certification card—Contents—Procedure—Affidavit.
66.20.200	Unlawful acts relating to card of identification and certification card—Penalty.
66.20.210	Licensee's immunity to prosecution or suit—Certification card as evidence of good faith.

66.20.010 Permits classified—Issuance—Fees. Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit;

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit;

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit by a manufacturer to import alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special import permit;

(5) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit;

(6) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation at prices to be fixed by the board;

(7) Where the application is for a special permit by a manufacturer, importer, wholesaler, or agent thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a class H licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(8) Where the application is for a special permit by a manufacturer, importer, wholesaler, or agent thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a class H licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210. [1975-'76 2nd ex.s. c 62 § 2; 1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

66.20.020 Permits not transferable—False name or address prohibited—Sacramental liquor, wine. (1) Every permit shall be issued in the name of the applicant therefor, and no permit shall be transferable, nor shall the holder of any permit allow any other person to use the permit.

(2) No person shall apply in any false or fictitious name for the issuance to him of a permit, and no person shall furnish a false or fictitious address in his application for a permit.

(3) Nothing in this title shall be construed as limiting the right of any minister, priest or rabbi, or religious organization from obtaining wine for sacramental purposes directly from any source whatsoever, whether from within the limits of the state of Washington or from outside the state; nor shall any fee be charged, directly or indirectly, for the exercise of this right. The board shall have the power and authority to make reasonable rules and regulations concerning the importing of any such liquor or wine, for the purpose of preventing any unlawful use of such right. [1933 ex.s. c 62 § 13; RRS § 7306-13. Formerly RCW 66.12.100, 66.20.020 and 66.20.030.]

66.20.040 Applicant must sign permit. No permit shall be valid or be accepted or used for the purchase of liquor until the applicant for the permit has written his signature thereon in the prescribed manner, for the purposes of identification as the holder thereof, in the presence of the employee to whom the application is made. [1933 ex.s. c 62 § 14; RRS § 7306-14.]

66.20.060 Duration of permits. Every permit issued for use after October 1, 1955, shall expire at midnight on the thirtieth day of June of the fiscal year for which the permit was issued, except special permits for banquets and special permits to physicians, dentists, or persons in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people. [1955 c 180 § 1; 1935 c 174 § 1; 1933 ex.s. c 62 § 16; RRS § 7306-16.]

66.20.070 Suspension or cancellation of permits. Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit. [1933 ex.s. c 62 § 17; RRS § 7306-17.]

Cancellation of liquor permit—Interdiction by decree: RCW 66.20.135.

66.20.080 Surrender of suspended or canceled permit—New permit, when. Upon receipt of notice of the suspension or cancellation of his permit, the holder of the permit shall forthwith deliver up the permit to the board. Where the permit has been suspended only, the board shall return the permit to the holder at the expiration or termination of the period of suspension. Where the permit has been suspended or canceled, no employee shall knowingly issue to the person whose permit is suspended or canceled a permit under this title until the end of the period of suspension or within the period of one

year from the date of cancellation. [1933 ex.s. c 62 § 18; RRS § 7306-18.]

66.20.090 Taking up permits wrongfully presented. Where any permit is presented to an employee by a person who is not the holder of the permit, or where any permit which is suspended or canceled is presented to an employee, the employee shall retain the permit in his custody and shall forthwith notify the board of the fact of its retention. [1933 ex.s. c 62 § 19; RRS § 7306-19.]

66.20.100 Physician may prescribe or administer liquor—Penalty. Any physician who deems liquor necessary for the health of a patient, whether an interdicted person or not, whom he has seen or visited professionally may give to the patient a prescription therefor, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician may administer the liquor purchased by him under special permit and may charge for the liquor so administered; but no prescription shall be given or liquor be administered by a physician except to bona fide patients in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary; and any physician who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 20; RRS § 7306-20.]

66.20.110 Dentist may administer liquor—Penalty. Any dentist who deems it necessary that any patient then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor obtained by him under special permit pursuant to this title, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to bona fide patients in cases of actual need; and every dentist who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 21; RRS § 7306-21.]

66.20.120 Hospitals, etc., may administer liquor—Penalty for violation. Any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this title for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for medicinal purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need and every person in charge of an institution who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 22; RRS § 7306-22.]

66.20.130 Permits denied interdicted persons. No permit shall be issued to any interdicted person. [1933 ex.s. c 62 § 39; RRS § 7306-39.]

66.20.135 Cancellation of liquor permit—Interdiction by decree. Whenever any person shall have been declared an habitual drunkard by virtue of *RCW 71.08.030 through 71.08.090, the court declaring such person an habitual drunkard shall, at the same time, make an order directing the cancellation of any permit held by that person and prohibiting the sale of liquor to him until further order; and the court shall cause a certified copy of the order to be forthwith filed with the board, and the officer making and transmitting such certified copy shall make no charge therefor. Upon receipt of the order of interdiction, the board shall cancel any permit held by the interdicted person. [1933 ex.s. c 62 § 53; RRS § 7306-53. Formerly RCW 71.08.100.]

*Reviser's note: RCW 71.08.030 through 71.08.090 were repealed by 1972 ex.s. c 122 § 26.

66.20.137 Revocation of interdiction. Whenever any order declaring a person to be an habitual drunkard shall have been annulled and vacated by the court by virtue of *RCW 71.08.090, the judge of said court shall also file an order with the board revoking the former order of interdiction; and upon the filing of the order of revocation, the interdicted person shall be restored to all his rights under this title. [1933 ex.s. c 62 § 54; RRS § 7306-54. Formerly RCW 71.08.110.]

Reviser's note: RCW 71.08.090 was repealed by 1972 ex.s. c 122 § 26.

66.20.140 Limitation on application after cancellation or suspension. No person whose permit has been canceled within the period of twelve months next preceding, or is suspended, shall make application to any employee under this title for another permit. [1933 ex.s. c 62 § 40; RRS § 7306-40.]

66.20.150 Purchases prohibited under canceled, suspended permit or under another's permit. No person shall purchase or attempt to purchase liquor under a permit which is suspended, or which has been canceled, or of which he is not the holder. [1933 ex.s. c 62 § 41; RRS § 7306-41.]

66.20.160 "Card of identification", "licensee", "store employee" defined for certain purposes. Words and phrases as used in RCW 66.20.160 to 66.20.210, inclusive, shall have the following meaning:

"Card of identification" means any one of those cards described in RCW 66.16.040.

"Licensee" means the holder of a retail liquor license issued by the board, and includes any employee or agent of the licensee.

"Store employee" means a person employed in a state liquor store or agency to sell liquor. [1973 1st ex.s. c 209 § 4; 1971 ex.s. c 15 § 2; 1959 c 111 § 4; 1949 c 67 § 1; Rem. Supp. 1949 § 7306-19A.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.170 Card of identification may be accepted as identification card and evidence of legal age. A card of identification may for the purpose of this title and for the purpose of procuring liquor, be accepted as an identification card by any licensee or store employee and as evidence of legal age of the person presenting such card, provided the licensee or store employee complies with the conditions and procedures prescribed herein and such regulations as may be made by the board. [1973 1st ex.s. c 209 § 5; 1971 ex.s. c 15 § 3; 1959 c 111 § 5; 1949 c 67 § 2; Rem. Supp. 1949 § 7306–19B.]

Severability—**Effective date**—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.180 Card of identification to be presented on request of licensee. A card of identification shall be presented by the holder thereof upon request of any licensee, store employee, peace officer, or enforcement officer of the board for the purpose of aiding the licensee, store employee, peace officer, or enforcement officer of the board to determine whether or not such person is of legal age to purchase liquor when such person desires to procure liquor from a licensed establishment or state liquor store or agency. [1973 1st ex.s. c 209 § 6; 1971 ex.s. c 15 § 4; 1959 c 111 § 6; 1949 c 67 § 3; Rem. Supp. 1949 § 7306–19C.]

Severability—**Effective date**—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.190 Identification card holder may be required to sign certification card—Contents—Procedure—Affidavit. In addition to the presentation by the holder and verification by the licensee or store employee of such card of identification, the licensee or store employee who is still in doubt about the true age of the holder shall require the person whose age may be in question to sign a certification card and record an accurate description and serial number of his card of identification thereon. Such statement shall be upon a five-inch by eight-inch file card, which card shall be filed alphabetically by the licensee or store employee at or before the close of business on the day on which the statement is executed, in the file box containing a suitable alphabetical index and the card shall be subject to examination by any peace officer or agent or employee of the board at all times. The certification card shall also contain in bold-face type an affidavit stating that the signer understands that conviction for unlawful purchase of alcoholic beverages or misuse of the certification card may result in criminal penalties including imprisonment or fine or both. [1975 1st ex.s. c 173 § 4; 1973 1st ex.s. c 209 § 7; 1971 ex.s. c 15 § 5; 1959 c 111 § 7; 1949 c 67 § 4; Rem. Supp. 1949 § 7306–19D.]

Severability—**Effective date**—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Severability—**Effective date**—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.200 Unlawful acts relating to card of identification and certification card—Penalty. It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not more than one hundred dollars or imprisonment for not more than thirty days or both. Any person not entitled thereto who unlawfully procures or has issued or transferred to him a card of identification, and any person who possesses a card of identification not issued to him, and any person who makes any false statement on any certification card required by RCW 66.20.190, as now or hereafter amended, to be signed by him, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not more than one hundred dollars or imprisonment for not more than thirty days or both. [1973 1st ex.s. c 209 § 8; 1971 ex.s. c 15 § 6; 1969 ex.s. c 178 § 2; 1959 c 111 § 8; 1949 c 67 § 5; Rem. Supp. 1949 § 7306–19E.]

Severability—**Effective date**—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

Unlawful transfer to a minor of an identification of age: RCW 66.44.325.

66.20.210 Licensee's immunity to prosecution or suit—Certification card as evidence of good faith. No licensee or the agent or employee of the licensee, or store employee, shall be prosecuted criminally or be sued in any civil action for serving liquor to a person under legal age to purchase liquor if such person has presented a card of identification in accordance with RCW 66.20.180, and has signed a certification card as provided in RCW 66.20.190.

Such card in the possession of a licensee may be offered as a defense in any hearing held by the board for serving liquor to the person who signed the card and may be considered by the board as evidence that the licensee acted in good faith. [1973 1st ex.s. c 209 § 9; 1971 ex.s. c 15 § 7; 1959 c 111 § 9; 1949 c 67 § 6; Rem. Supp. 1949 § 7306–19F.]

Severability—**Effective date**—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

Chapter 66.24

LICENSES—STAMP TAXES

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66.24.010 Issuance, transferability, refusal, suspension, cancellation, hearings, procedure—Duration—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.

(1) Every license shall be issued in the name of the applicant and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. The board may, in its discretion, grant or refuse the license applied for. No retail license of any kind shall be issued to:

(a) A person who is not a citizen of the United States, except when the privilege is granted by treaty;

(b) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(c) A person who has been convicted of a felony within five years prior to filing his application;

(d) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(e) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(f) A corporation, unless all of the officers thereof are citizens of the United States.

(3) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be. The board may appoint examiners who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

Witnesses shall be allowed fees at the rate of four dollars per day, plus ten cents per mile each way. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or examiner, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension, with a memorandum of the suspension written or stamped upon the face thereof in red ink. The board shall notify all vendors in the city or place where

the licensee has its premises of the suspension or cancellation of the license; and no employee shall allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued: *Provided*, That the foregoing expiration date shall not apply to class A, B, C, D, or H licenses issued for premises located on the site of any world exposition approved by the Bureau of International Expositions held in this state, and such licenses shall be valid without renewal for a period of two hundred days from and including the opening day of such exposition, or from and including such earlier date specified by the applicant.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by the regulations in force from time to time.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8) Before the board shall issue a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application be for a license within an incorporated city or town, or to the board of county commissioners, if the application be for a license outside the boundaries of incorporated cities or towns; and such incorporated city or town, through the official or employee selected by it, or the board of county commissioners or the official or employee, selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the license is asked, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the liquor control board may in its discretion hold a formal hearing subject to the applicable provisions of chapter 34.04 RCW, as now or hereafter amended. Upon the granting of a license under this title the board shall cause a duplicate of the license to be transmitted to the chief executive officer of the incorporated city or town in which the license is granted, or to the board of county commissioners if the license is granted outside the boundaries of incorporated cities or towns.

(9) Before the board issues any license to any applicant, it shall give due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools and public institutions: *Provided*, That the board shall issue no beer retailer license class A, B, or D or wine retailer license class C covering any premises not now licensed, if such premises are within five hundred feet of the premises of any church, parochial, or tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the outer property line of the church or school grounds to the nearest public entrance of the premises proposed for license, unless the board shall receive written notice from an official representative or representatives of the schools and/or

churches within five hundred feet of said proposed licensed premises, indicating to the board that there is no objection to the issuance of such license because of proximity to a school or church. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith.

(10) The restrictions set forth in the preceding subsection shall not prohibit the board from authorizing the transfer of existing licenses now located within the restricted area to other persons or locations within the restricted area: *Provided*, Such transfer shall in no case result in establishing the licensed premises closer to a church or school than it was before the transfer. [1974 ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1935 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306-27. Formerly RCW 66.24.010, part and 66.24.020 through 66.24.100. Former part of section: 1937 c 217 § 1 (23-U) now codified as RCW 66.24.025.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 c 70 § 4.] This applies to RCW 66.24.010, 66.24.025 and the repeal of RCW 66.24.110.

66.24.025 Assignment of license—Fee—Exception. The holder of one or more licenses may assign and transfer the same to any qualified person under such rules and regulations as the board may prescribe: *Provided, however*, That no such assignment and transfer shall be made which will result in both a change of licensee and change of location; the fee for such assignment and transfer shall be thirty-five dollars: *Provided, further*, That no fee will be charged for transfer to the surviving spouse only of a deceased licensee if the parties were maintaining a marital community and the license was issued in the names of one or both of the parties. [1973 1st ex.s. c 209 § 11; 1971 c 70 § 2; 1937 c 217 § 1 (23-U) (adding new section 23-U to 1933 ex.s. c 62); RRS § 7306-23U.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: See note following RCW 66.24.010.

66.24.120 Vacation of suspension on payment of penalty. The board in suspending any license may further provide in the order of suspension that such suspension shall be vacated upon payment to the board by the licensee of a monetary penalty in an amount then fixed by the board. [1973 1st ex.s. c 209 § 12; 1939 c 172 § 7 (adding new section 27-C to 1933 ex.s. c 62); RRS § 7306-27C.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.140 Distillers' license—Fee. There shall be a license to distillers, including blending, rectifying and bottling; fee one thousand dollars per annum: *Provided*, That the board shall license stills used and to be used solely and only by a commercial chemist for laboratory purposes, and not for the manufacture of liquor for sale,

at a fee of ten dollars per annum: *Provided, further*, That the board shall license stills used and to be used solely and only for laboratory purposes in any school, college or educational institution in the state, without fee: *Provided, further*, That the board shall license stills which shall have been duly licensed as fruit and/or wine distilleries by the federal government, used and to be used solely as fruit and/or wine distilleries in the production of fruit brandy and wine spirits, at a fee of fifty dollars per annum. [1937 c 217 § 1 (23D) (adding new section 23-D to 1933 ex.s. c 62); RRS § 7306-23D.]

66.24.150 Manufacturers' license—Fee. There shall be a license to manufacturers of liquor, including all kinds of manufacturers except distillers, brewers, wineries, and domestic wineries; fee two hundred fifty dollars per annum. [1937 c 217 § 1 (23A) (adding new section 23-A to 1933 ex.s. c 62); RRS § 7306-23A.]

66.24.160 Liquor importer's license—Fee. A liquor importer's license may be issued to any qualified person, firm or corporation, entitling the holder thereof to import into the state any liquor other than beer or wine; to store the same within the state, and to sell and export the same from the state; fee three hundred dollars per annum. Such liquor importer's license shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board, and shall be issued only upon such terms and conditions as may be imposed by the board. No liquor importer's license shall be required in sales to the Washington state liquor control board. [1970 ex.s. c 13 § 1. Prior: 1969 ex.s. c 275 § 2; 1969 ex.s. c 21 § 1; 1937 c 217 § 1 (23J) (adding new section 23-J to 1933 ex.s. c 62); RRS § 7306 (23J).]

66.24.170 Domestic winery license—Fee based on gallonage manufactured—Report—Wineries other than domestic. (1) There shall be a license to domestic wineries; fee to be computed only on the gallonage manufactured: Twenty-five hundred gallons or less per year, fifteen dollars per year; over twenty-five hundred gallons to ten thousand gallons per year, thirty dollars per year; over ten thousand gallons to twenty-five thousand gallons per year, fifty dollars per year; over twenty-five thousand gallons to fifty thousand gallons per year, seventy-five dollars per year; over fifty thousand gallons to one hundred thousand gallons per year, one hundred and twenty-five dollars per year; over one hundred thousand gallons to two hundred thousand gallons per year, two hundred dollars per year; over two hundred thousand gallons to five hundred thousand gallons per year, two hundred and fifty dollars per year; for each five hundred thousand gallons or fraction thereof over five hundred thousand gallons, an additional one hundred and fifty dollars per year.

Any applicant for a domestic winery license shall, at the time of filing application for license, accompany such application with a license fee based upon a reasonable estimate of the amount of wine gallonage to be manufactured by such applicant. Persons holding domestic winery licenses shall report annually at the end of each fiscal year, at such time and in such manner as the

board may prescribe, the amount of wine manufactured by them during the fiscal year. If the total amount of wine manufactured during the year exceeds the amount permitted annually by the license fee already paid the board, the licensee shall pay such additional license fee as may be unpaid in accordance with the schedule provided in this section.

(2) There shall be a license to wineries, other than domestic wineries, fee to be computed and paid upon the same basis and subject to the same requirements as domestic wineries. [1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180 and 66.24.190.]

66.24.200 Wine wholesaler's license—Fee. There shall be a license to wine wholesalers to sell wine, manufactured within or without the state, to licensed wholesalers and/or to holders of wine retailer's licenses and to export the same from the state; fee two hundred fifty dollars per annum for each distributing unit. [1969 ex.s. c 21 § 2; 1937 c 217 § 1 (23K) (adding new section 23-K to 1933 ex.s. c 62); RRS § 7306-23K.]

Effective date—1969 ex.s. c 21: The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

66.24.204 Wine importer's license—Fee. (1) It shall be unlawful for any person, firm or corporation, to import wine into the state of Washington or to transport or cause the same to be transported into the state of Washington for sale therein, unless such person, firm or corporation, has obtained from the Washington state liquor control board and have in force a wine importer's license. The license fee for such wine importer's license shall be thirty dollars per annum;

(2) The wine importer's license herein provided for shall authorize the holder thereof to sell wine imported, or transported, or caused to be transported thereunder to licensed wine wholesalers within the state and to export the same from the state. Every person, firm or corporation, licensed as a wine importer, shall establish and maintain a principal office within the state, at which shall be kept proper records of all wine imported into the state, under his, their, or its license. No wine importer's license shall be granted to a nonresident of the state, nor to a corporation whose principal place of business is outside the state, until such applicant has established such principal office within the state as hereinbefore provided, and has designated a statutory agent within the state upon whom service can be made;

(3) Every wine importer's license issued under this title shall be subject to all conditions and restrictions imposed by this title, or by the rules and regulations of the board. [1969 ex.s. c 21 § 9.]

Effective date—1969 ex.s. c 21: The effective date of this section is July 1, 1969, see note following RCW 66.04.010.

66.24.206 Certificate of approval required for out-of-state winery or manufacturer of wine or importer of wine produced outside United States—Reports—Agreement with board—Fee. No wine wholesaler nor

wine importer shall purchase any wine not manufactured within the state of Washington by a winery holding a license as a manufacturer of wine from the state of Washington, and/or transport or cause the same to be transported into the state of Washington for resale therein, unless the winery or manufacturer of such wine, or the licensed importer of wine produced outside the United States, has obtained from the Washington state liquor control board a certificate of approval, as herein-after provided. The certificate of approval herein provided for shall not be granted unless and until such winery, manufacturer, or licensed importer of wine produced outside the United States, shall have made a written agreement with the board to furnish to the board, on or before the tenth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of wine sold or delivered to each licensed wine importer, or imported by the licensed importer of wine produced outside the United States, during the preceding month, and shall further have agreed with the board, that such wineries, manufacturers, or licensed importers of wine produced outside the United States, and all general sales corporations or agencies maintained by them, and all of their trade representatives and agents, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. If any such winery, manufacturer, or licensed importer of wine produced outside the United States, shall, after obtaining such certificate, fail to submit such report, or if such winery, manufacturer, or licensed importer of wine produced outside the United States, or general sales corporations or agencies maintained by them, or their trade representatives or agents, shall violate the terms of such agreement, the board shall, in its discretion, suspend or revoke such certificate: *Provided, however,* That such certificates of approval shall be issued only for specifically named designated and identified types of wine. The Washington state liquor control board shall not certify wines labeled with names which may be confused with other nonalcoholic beverages, whether manufactured or produced from a domestic winery or imported, nor wines which fail to meet quality standards established by the board.

The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be fifty dollars per annum, which sum shall accompany the application for such certificate. [1973 1st ex.s. c 209 § 13; 1969 ex.s. c 21 § 10.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1969 ex.s. c 21: The effective date of this section is July 1, 1969, see note following RCW 66.04.010.

66.24.210 Imposition of tax on all wines sold to wine wholesalers and liquor control board. There is hereby imposed upon all wines sold to wine wholesalers and the Washington state liquor control board, within the state a tax of seventy-five cents per wine gallon: *Provided, however,* That wine sold or shipped in bulk from one winery to another winery shall not be subject to such

gallage tax. The tax herein provided for may, if so prescribed by the board, be collected by means of stamps to be furnished by the board, or by direct payments based on gallage purchased by wine wholesalers. Every person purchasing wine under the provisions of this section shall report all sales to the board in such manner, at such times and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. If this tax be collected by means of stamps, every such person shall procure from the board revenue stamps representing the tax in such form as the board shall prescribe and shall affix the same to the package or container in such manner and in such denomination as required by the board and shall cancel the same prior to the delivery of the package or container containing the wine to the purchaser. If the tax is not collected by means of stamps, the board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel his license until all taxes are paid. [1973 1st ex.s. c 204 § 2; 1969 ex.s. c 21 § 3; 1943 c 216 § 2; 1939 c 172 § 3; 1935 c 158 § 3 (adding new section 24A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-24A. Formerly RCW 66-.04.120, 66.24.210, part, 66.24.220 and 66.24.230, part. FORMER PART OF SECTION: 1933 ex.s. c 62 § 25, part, now codified as RCW 66.24.230.]

Floor stocks tax: "There is hereby imposed upon every licensed wine wholesaler who possesses wine for resale upon which the tax has not been paid under section 2 of this 1973 amendatory act, a floor stocks tax of sixty-five cents per wine gallon on wine in his possession or under his control on June 30, 1973. Each such wholesaler shall within twenty days after June 30, 1973, file a report with the Washington State liquor control board in such form as the board may prescribe, showing the wine products on hand July 1, 1973, converted to gallons thereof and the amount of tax due thereon. The tax imposed by this section shall be due and payable within twenty days after July 1, 1973, and thereafter bear interest at the rate of one percent per month." [1973 1st ex.s. c 204 § 3.]

Effective date—1973 1st ex.s. c 204: See note following RCW 82.08.150.

Effective date—1969 ex.s. c 21: The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

66.24.230 Monthly reports of winery and wine importer—Prohibited, authorized sales. Every winery and wine importer licensed under this title shall make monthly reports to the board pursuant to the regulations. Such winery and wine importer shall make no sales of wine within the state of Washington except to the board, or as otherwise provided in this title. [1969 ex.s. c 21 § 4; 1933 ex.s. c 62 § 25; RRS § 7306-25. Formerly RCW 66.24.210 and 66.24.230. FORMER PART OF SECTION: 1943 c 216 § 2, part, now codified in RCW 66.24.210.]

Effective date—1969 ex.s. c 21: The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

66.24.240 Brewers' license—Fee. There shall be a license to brewers to manufacture malt liquors, fee per

annum to be based on current fiscal year's production at the rate of fifty dollars per thousand barrels, with a minimum fee of two hundred fifty dollars, such license fee to be collected and paid under such rules and regulations as the board shall prescribe. [1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

66.24.250 Beer wholesalers' license—Fee. There shall be a license to beer wholesalers to sell beer, manufactured within or without the state, to licensed wholesalers and/or to holders of beer retailer's licenses, and to export the same from the state; fee two hundred fifty dollars per annum for each distributing unit. [1937 c 217 § 1 (23E) (adding new section 23-E to 1933 ex.s. c 62); RRS § 7306-23E.]

66.24.260 Beer importers' license—Fee—Rights of licensee—Principal office and agent. (1) It shall be unlawful for any person, firm or corporation, to import beer into the state of Washington or to transport or cause the same to be transported into the state of Washington for sale therein, unless such person, firm or corporation, has obtained from the Washington state liquor control board and have in force a beer importer's license. The license fee for such beer importer's license shall be ten dollars per annum;

(2) The beer importer's license herein provided for shall authorize the holder thereof to sell beer imported, or transported, or caused to be transported thereunder to licensed beer wholesalers within the state and to export the same from the state. Every person, firm or corporation, licensed as a beer importer, shall establish and maintain a principal office within the state, at which shall be kept proper records of all beer imported into the state, under his, their, or its license. No beer importer's license shall be granted to a nonresident of the state, nor to a corporation whose principal place of business is outside the state, until such applicant has established such principal office within the state as hereinbefore provided, and has designated a statutory agent within the state upon whom service can be made;

(3) Every beer importer's license issued under this title shall be subject to all conditions and restrictions imposed by this title, or by the rules and regulations of the board. [1937 c 217 § 1 (23G) (adding new section 23-G to 1933 ex.s. c 62); RRS § 7306-23G.]

66.24.270 Manufacturers' monthly report to board of sales made to beer wholesalers—Certificate of approval and report for out-of-state or imported beer—Fee. (1) Every person, firm or corporation, holding a license to manufacture malt liquors within the state of Washington, shall, on or before the tenth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors sold for resale during the preceding calendar month to each beer wholesaler within the state of Washington;

(2) No beer wholesaler nor beer importer shall purchase any beer not manufactured within the state of

Washington by a brewer holding a license as a manufacturer of malt liquors from the state of Washington, and/or transport or cause the same to be transported into the state of Washington for resale therein, unless the brewer or manufacturer of such beer or the licensed importer of beer produced outside the United States has obtained from the Washington state liquor control board a certificate of approval, as hereinafter provided. The certificate of approval herein provided for shall not be granted unless and until such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States shall have made a written agreement with the board to furnish to the board, on or before the tenth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of beer sold or delivered to each licensed beer importer or imported by the licensed importer of beer produced outside the United States during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States and all general sales corporations or agencies maintained by such brewers or manufacturers or importers, and all trade representatives or agents of such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States, and of such general sales corporations and agencies, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. If any such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States shall, after obtaining such certificate, fail to submit such report, or if such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States or general sales corporation or agency maintained by such brewers or manufacturers or importers, or any representative or agent thereof, shall violate the terms of such agreement, the board shall, in its discretion, suspend or revoke such certificate;

(3) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be fifty dollars per annum, which sum shall accompany the application for such certificate. [1973 1st ex.s. c 209 § 14; 1969 ex.s. c 178 § 4; 1937 c 217 § 1 (23F) (adding new section 23-F to 1933 ex.s. c 62); RRS § 7306-23F. Formerly RCW 66.24.270 and 66.24.280.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.290 Authorized, prohibited sales by brewer or wholesaler—Monthly report of sales—Additional tax on gallonage—Revenue stamps. Any brewer or beer wholesaler licensed under this title may sell and deliver beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewer or beer wholesaler shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer within the state a tax of one dollar per barrel of thirty-one gallons on sales to

licensees within the state and on sales to licensees within the state of bottled and canned beer shall pay a tax computed in gallons at the rate of one dollar and fifty cents per barrel of thirty-one gallons. Each such brewer or wholesaler shall procure from the board revenue stamps representing such tax in form prescribed by the board and shall affix the same to the barrel or package in such manner and in such denominations as required by the board, and shall cancel the same prior to commencing delivery from his place of business or warehouse of such barrels or packages. Beer shall be sold by brewers and wholesalers in sealed barrels or packages. The revenue stamps herein provided for need not be affixed and canceled in the making of resales of barrels or packages already taxed by the affixation and cancellation of stamps as provided in this section.

The above tax shall not apply to "strong beer" as defined in this title. [1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

Severability—1965 ex.s. c 173 § 32: See note following RCW 82.98.030.

66.24.300 Refunds for unused, destroyed, exported beer stamps—Waiver of stamps. (1) The board may make refunds for all stamp taxes paid on beer exported from the state for use outside the state, and also for tax stamps destroyed prior to the consummation of any sale of beer within the state, or for unused stamps returned to the board.

(2) The board may waive the use of revenue stamps in the collection of the tax on beer. If the tax is not collected by means of stamps, the board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his license until all taxes are paid. [1951 c 93 § 1; 1937 c 217 § 2 (adding new section 24-B to 1933 ex.s. c 62); RRS § 7306-24B.]

66.24.305 Refunds of taxes on unsalable wine and beer. The board may refund the tax on wine imposed by RCW 66.24.210, and the tax on beer imposed by RCW 66.24.290, when such taxpaid products have been deemed to be unsalable and are destroyed within the state in accordance with procedures established by the board. [1975 1st ex.s. c 173 § 11.]

Severability—**Effective date**—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.24.310 Agent's license—Fee. (1) No person shall canvass for, solicit, receive, or take orders for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person shall be the accredited representative of a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer wholesaler's license, a brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine wholesaler's license within the state of Washington,

or the accredited representative of a distiller, manufacturer, importer, or distributor of spiritous liquor, or foreign produced beer or wine, and shall have applied for and received an agent's license: *Provided, however,* That the provisions of this section shall not apply to drivers who deliver beer or wine;

(2) Every agent's license issued under this title shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board; the board, for the purpose of maintaining an orderly market, may limit the number of agent's licenses issued for representation of specific classes of eligible employers;

(3) Every application for an agent's license must be approved by a holder of a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a licensed beer wholesaler, a licensed brewer, a licensed beer importer, a licensed domestic winery, a licensed wine importer, a licensed wine wholesaler, or by a distiller, manufacturer, importer, or distributor of spiritous liquor, or foreign produced beer or wine, as the rules and regulations of the board shall require;

(4) The fee for an agent's license shall be fifteen dollars per annum;

(5) An accredited representative of a distiller, manufacturer, importer, or distributor of spiritous liquor may, after he has applied for and received an agent's license, contact retail licensees of the board only in goodwill activities pertaining to spiritous liquor products. [1975-'76 2nd ex.s. c 74 § 1; 1971 ex.s. c 138 § 1; 1969 ex.s. c 21 § 5; 1939 c 172 § 2; 1937 c 217 § 1 (231) (adding new section 23-I to 1933 ex.s. c 62); RRS § 7306-231.]

Effective date—1975-'76 2nd ex.s. c 74: "The effective date of this 1976 amendatory act shall be July 1, 1976." [1975-'76 2nd ex.s. c 74 § 4.]

66.24.320 Beer retailer's license—Class A. There shall be a beer retailer's license to be designated as a class A license to sell beer at retail, for consumption on the premises and to sell unpasteurized beer for consumption off the premises: *Provided, however,* That unpasteurized beer so sold must be in original sealed packages of the manufacturer or bottler of not less than seven and three-fourths gallons: *And provided further,* That unpasteurized beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale; such license to be issued only to hotels, restaurants, drug stores or soda fountains, dining places on boats and airplanes, to clubs, and at sports arenas or race tracks during recognized professional athletic events. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns of less than 10,000; fee \$62.50;

Cities and towns of 10,000 and less than 100,000; fee \$125.00;

Cities and towns of 100,000 or over; fee \$187.50;

The annual fee for such license, if issued outside of cities and towns, shall be sixty-two dollars and fifty cents: *Provided, however,* That where dancing is permitted on the premises, the fee shall be one hundred eighty-seven dollars and fifty cents; the annual license fee for

such license, if issued to dining places on vessels not exceeding one thousand gross tons, plying on inland waters of the state of Washington on regular schedules, shall be sixty-two dollars and fifty cents. [1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23 M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

66.24.330 Beer retailer's license—Class B. There shall be a beer retailer's license to be designated as a class B license to sell beer at retail, for consumption on the premises and to sell unpasteurized beer for consumption off the premises: *Provided, however,* That unpasteurized beer so sold must be in original sealed packages of the manufacturer or bottler of not less than seven and three-fourths gallons: *And provided further,* That unpasteurized beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale; such license to be issued only to a person operating a tavern. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns of less than 10,000; fee \$62.50;

Cities and towns of 10,000 and less than 100,000; fee \$125.00;

Cities and towns of 100,000 or over; fee \$187.50;

The annual fee for such license, if issued outside of cities and towns, shall be sixty-two dollars and fifty cents: *Provided, however,* That where dancing is permitted on the premises, the fee shall be one hundred eighty-seven dollars and fifty cents. [1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23 N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.340 Wine retailer's license—Class C. There shall be a wine retailer's license to be designated as a class C license to sell wine at retail, for consumption on the premises only; such license to be issued to hotels, restaurants, dining places on boats and airplanes, clubs, and to taverns. The annual fee for said license, when issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns of less than 10,000; fee \$47.00;

Cities and towns of 10,000 and less than 100,000; fee \$93.75;

Cities and towns of 100,000 or over; fee \$140.50;

The annual fee, when issued outside of the limits of cities and towns, shall be forty-seven dollars: *Provided, however,* That where dancing is permitted on the premises, the fee shall be one hundred forty dollars and fifty cents; the annual license fee for such license, if issued to dining places on vessels not exceeding one thousand gross tons plying only on inland waters of the state of Washington on regular schedules, shall be forty-seven dollars. [1977 ex.s. c 9 § 3; 1967 ex.s. c 75 § 4; 1941 c

220 § 3; 1937 c 217 § 1 (23-O) (adding new section 23-O to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23 O.]

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.350 Beer retailer's license—Class D. There shall be a beer retailer's license to be designated as class D license to sell pasteurized beer by the opened bottle at retail, for consumption upon the premises only, such license to be issued to hotels, restaurants, dining places on boats and aeroplanes, clubs, drug stores, or soda fountains, and such other places where the sale of beer is not the principal business conducted; fee sixty-two dollars and fifty cents per annum. [1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23 P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.360 Beer retailer's license—Class E. There shall be a beer retailer's license to be designated as class E license to sell pasteurized beer at retail in bottles and original packages, not to be consumed upon the premises where sold, at any store other than the state liquor stores; fee thirty-one dollars and twenty-five cents per annum for each store: *Provided,* That a holder of a class A or a class B license shall be entitled to the privileges permitted in this section by paying an annual fee of twelve dollars and fifty cents for each store. [1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23 Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

Employees under eighteen allowed to carry beer or wine: RCW 66.44.340.

66.24.370 Wine retailer's license—Class F. There shall be a wine retailer's license to be designated as class F license to sell wine in bottles and original packages, not to be consumed on the premises where sold, at any store other than the state liquor stores: *Provided,* Such licensee shall pay to the state liquor stores for wines purchased from such stores the current retail price; fee forty-three dollars and seventy-five cents per annum: *Provided, further,* That a holder of a class A or class B license shall be entitled to the privileges permitted in this section by paying an annual fee of twelve dollars and fifty cents for each store. [1973 1st ex.s. c 209 § 16; 1967 ex.s. c 75 § 7; 1937 c 217 § 1 (23R) (adding new section 23-R to 1933 ex.s. c 62); RRS § 7306-23R.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

Employees under eighteen allowed to carry beer or wine: RCW 66.44.340.

66.24.380 Special beer license—Class G. There shall be a beer retailer's license to be designated as class G; a special license to a society or organization to sell beer at picnics or other special occasions at a specified date and place; fee ten dollars per day. Sale, service, and

consumption of beer is to be confined to specified premises or designated areas only. [1973 1st ex.s. c 209 § 17; 1969 ex.s. c 178 § 5; 1937 c 217 § 1 (23S) (adding new section 23-S to 1933 ex.s. c 62); RRS § 7306-23S.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.395 Interstate common carriers' licenses—
Class CCI. (1) (a) There shall be a license that may be issued to corporations, associations, or persons operating as federally licensed commercial common passenger carriers engaged in interstate commerce, in or over territorial limits of the state of Washington on passenger trains, vessels, or airplanes. Such license shall permit the sale of spirituous liquor, wine, and beer at retail for passenger consumption within the state upon one such train passenger car, vessel, or airplane, while in or over the territorial limits of the state. Such license shall include the privilege of transporting into and storing within the state such liquor for subsequent retail sale to passengers in passenger train cars, vessels or airplanes. The fees for such master license shall be six hundred dollars per annum (class CCI-1): *Provided*, That where the sale and/or service of alcoholic beverages by such federally licensed common passenger carrier does not include spirituous liquor, the fee shall be two hundred dollars per annum (class CCI-2): *Provided, further*, That upon payment of an additional sum of five dollars per annum per car, or vessel, or airplane, the privileges authorized by such license classes shall extend to additional cars, or vessels, or airplanes operated by the same licensee within the state, and a duplicate license for each additional car, or vessel, or airplane shall be issued: *Provided, further*, That such licensee may make such sales and/or service upon cars, or vessels, or airplanes in emergency for not more than five consecutive days without such license: *And provided, further*, That such license shall be valid only while such cars, or vessels, or airplanes are actively operated as common carriers for hire in interstate commerce and not while they are out of such common carrier service.

(b) Alcoholic beverages sold and/or served for consumption by such interstate common carriers while within or over the territorial limits of this state shall be subject to such board markup and state liquor taxes in an amount to approximate the revenue that would have been realized from such markup and taxes had the alcoholic beverages been purchased in Washington: *Provided*, That the board's markup shall be applied on spirituous liquor only. Such common carriers shall report such sales and/or service and pay such markup and taxes in accordance with procedures prescribed by the board.

(2) Where such an interstate federally licensed common carrier does not sell spirituous liquor, wine, or beer at retail for passenger consumption while within or over the territorial limits of this state, but the business operation of the interstate common carrier requires the bringing in and storing of liquor within the state the license fee shall be four hundred dollars per annum (class CCI-3): *Provided*, That where such transporting and/or storage of alcoholic beverages by such common carrier

does not include spirituous liquor, the license fee shall be one hundred dollars per annum (class CCI-4).

(3) Alcoholic beverages sold and delivered in this state to interstate common carriers for use under the provisions of this section shall be considered exported from the state, subject to the conditions provided in subsection (1)(b). The storage facilities for liquor within the state by common carriers licensed under this section shall be subject to written approval by the board. [1975 1st ex.s. c 245 § 2.]

66.24.400 Liquor by the drink, class H licenses.
 There shall be a retailer's license, to be known and designated as class H license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only. Such class H license may be issued only to bona fide restaurants, hotels and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at publicly owned civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a class H license under the provisions and limitations of this title. [1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

Severability—1949 c 5: RCW 66.98.080.

66.24.410 Liquor by the drink, class H licenses—
Terms defined. (1) "Spirituous liquor," as used in RCW 66.24.400 to *66.24.470, inclusive, means "liquor" as defined in RCW 66.04.010(16), except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to *66.24.470, inclusive, means an establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains: *Provided*, That such establishments shall be approved by the board and that the board shall be satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders or such food and victuals as sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition.

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to *66.24.470, inclusive, with the meaning given in chapter 66.04 RCW. [1969 ex.s. c 112 § 1; 1957 c 263 § 2. Prior: 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

***Reviser's note:** RCW 66.24.470 is now codified as RCW 66.98.070.
Severability—1949 c 5: RCW 66.98.080.

66.24.420 Liquor by the drink, class H licenses—
Schedule of fees—Location—Number of licenses.

(1) The class H license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for said license, if issued to a club, whether inside or outside of incorporated cities and towns, shall be three hundred thirty dollars.

(b) The annual fee for said license, if issued to any other class H licensee in incorporated cities and towns, shall be graduated according to the population thereof as follows:

Incorporated cities and towns of less than 10,000 population; fee \$550.00;

Incorporated cities and towns of 10,000 and less than 100,000 population; fee \$825.00;

Incorporated cities and towns of 100,000 population and over; fee \$1,100.00.

(c) The annual fee for said license when issued to any other class H licensee outside of incorporated cities and towns shall be: one thousand one hundred dollars; this fee shall be prorated according to the calendar months, or major portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(d) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: *Provided*, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: *Provided, further*, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association, or person operating dining places at publicly owned civic centers with facilities for sports, entertainment, and conventions, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: *Provided*, That the holder of a master license for a dining place at such a publicly owned civic center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and food service shall be available on request in other licensed places on the premises: *Provided further*, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(f) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property at the discretion of the board and a duplicate license may be issued for each additional place: *Provided*, That the holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license: *Provided further*, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine class H licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue class H licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of class H licenses issued in the state of Washington by the board, not including those class H licenses issued to clubs, shall not in the aggregate at any time exceed one license for each fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a class H license to any applicant if in the opinion of the board the class H licenses already granted for the particular locality are adequate for the reasonable needs of the community. [1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2. Prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Severability—1949 c 5: RCW 66.98.080.

66.24.440 Liquor by the drink, class H licenses—Purchase of liquor by licensees—Discount. Each class H licensee shall be entitled to purchase any spirituous liquor items salable under such class H license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes. [1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

Severability—1949 c 5: RCW 66.98.080.

66.24.450 Liquor by the drink, class H licenses—Licenses to clubs—Qualifications. No club shall be entitled to a class H license:

(1) Unless such club had been in operation at least three years prior to December 2, 1948, or, the club, being thereafter formed, had been in continuous operation for at least one year immediately prior to the date of its application for such license;

(2) Unless the club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(3) Unless the board shall have determined pursuant to any regulations made by it with respect to clubs, that such club is a bona fide club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide club, where the sale of liquor is incidental to the main purposes of the club, as defined in RCW 66.04.010(5);

(4) Each club holding a club license under this section prior to its amendment by this act [1949 c 5 § 6] shall have a period of six months, from and after December 2, 1948, to apply for and obtain a class H license. From and after six months after December 2, 1948, each club license granted under this section prior to its amendment by this act [1949 c 5 § 6] shall be null and void. The board shall reserve a sufficient number of class H licenses to license each club which has been in operation for one year prior to December 2, 1948: *Provided*, That such club qualifies therefor under the provisions of this title. [1949 c 5 § 6; 1937 c 217 § 1 (23T) (adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

Severability—1949 c 5: RCW 66.98.080.

66.24.455 Bowling establishments—Extension of premises to concourse and lane areas—Class A, C, D or H licensees. Subject to approval by the board, holders of class A, C, D or H licenses may extend their premises for the sale, service and consumption of liquor authorized under their respective licenses to the concourse or lane areas in a bowling establishment where the concourse or lane areas are adjacent to the food preparation service facility. [1974 ex.s. c 65 § 1.]

66.24.480 Bottle clubs—License required. "Bottle club" means a club or association operating for profit or otherwise and conducting or maintaining premises in which the members or other persons may resort for the primary or incidental purpose of keeping or consuming liquor on the premises.

Except as permitted under a license issued by the Washington state liquor control board, it is unlawful for any person to conduct or maintain by himself or by associating with others, or to in any manner aid, assist, or abet in conducting or maintaining a bottle club. [1951 c 120 § 2 (adding a new section to Title 66 RCW).]

Reviser's note: As to the constitutionality of this section, see *Derby Club v. Beckett*, 41 Wn. 2d 869 (1953).

66.24.481 Public place or club—License or permit required—Penalty. No public place or club, or agent, servant or employee thereof, shall keep or allow to be kept, either by itself, its agent, servant or employee, or any other person, any liquor in any place maintained or conducted by such public place or club, nor shall it permit the drinking of any liquor in any such place, unless the sale of liquor in said place is authorized by virtue of a valid and subsisting license issued by the Washington state liquor control board, or the consumption of liquor in said place is authorized by a special banquet permit issued by said board. Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

"Public place," for purposes of this section only, shall mean in addition to the definition set forth in RCW 66.04.010(24), any place to which admission is charged or in which any pecuniary gain is realized by the owner or operator of such place in selling or vending food or soft drinks. [1969 ex.s. c 250 § 2; 1953 c 141 § 1 (adding a new section to chapter 66.24 RCW).]

66.24.490 Special occasion license—Class I—Fee. There shall be a retailer's license to be designated as a class I license; this shall be a special occasion license to be issued to the holder of a class H license to extend his privilege of selling and serving spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, to members and guests of a society or organization on special occasions at a specified date and place when such special occasions of such groups are held on premises other than a class H licensed premises and for consumption on the premises of such outside location. The holder of such special occasion license shall be allowed to remove from his liquor stocks at his licensed class H premises, liquor for sale and service at such special occasion locations: *Provided*, That such special license shall be issued only when the facilities of class H licensees in the particular city or county are not suitable and adequate to accommodate the number of persons attending such special occasion: *And provided further*, That the Washington state liquor control board may issue banquet permits when such groups prefer to provide their own liquor under such a permit rather than avail themselves of sale and service of liquor by the holder of a class I license. Such special class I license shall be issued for a specified date and place and upon payment of a fee of twenty-five dollars per day. [1977 ex.s. c 9 § 5; 1969 ex.s. c 178 § 7; 1967 c 55 § 1.]

66.24.500 Special occasion wine retailer's license—Class J—Fee. There shall be a wine retailer's license to be designated as class J; a special license to a society or organization to sell wine at special occasions at a specified date and place; fee ten dollars per day. Sale, service, and consumption of wine is to be confined to specified premises or designated areas only. [1973 1st ex.s. c 209 § 18; 1969 ex.s. c 178 § 9.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.510 Nonprofit organization special occasion license—Class K—Fee. There shall be a spirituous liquor retailer's license to be designated as class K; a special license to a nonprofit organization to sell spirituous liquor as defined in RCW 66.24.410 by the glass, including mixed drinks and cocktails compounded or mixed on the premises only, to their members and invited guests at special occasions at a specified date and place when said special occasion is not open to the general public; fee twenty-five dollars per day. Sale, service, and consumption of spirituous liquor is to be confined to specified premises or designated areas only. Spirituous liquor so sold shall be purchased at a state liquor store or agency without discount at retail prices including all taxes. No more than two such licenses may be issued to any one nonprofit organization during a calendar year. [1975 1st ex.s. c 173 § 12.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Chapter 66.28

MISCELLANEOUS REGULATORY PROVISIONS

Sections

66.28.010	Manufacturers, importers and wholesalers barred from interest in retail business or location—Advances prohibited—"Financial interest" defined.
66.28.020	Persons interested or dealing in distilled spirits barred from interest in brewery or beer wholesaler's business or location—Advances prohibited—Exceptions.
66.28.025	Persons interested in business property or location, etc., of wine wholesaler—Advances—Exceptions.
66.28.030	Responsibility of brewers, vintners, manufacturers holding certificate approval and importers for conduct of wholesaler—Penalties.
66.28.040	Giving away of liquor prohibited—Exceptions.
66.28.045	Furnishing samples to board—Standards for accountability—Regulations.
66.28.050	Solicitation of orders prohibited—Exceptions.
66.28.060	Distillers to make monthly report—No sale except to board.
66.28.070	Restrictions on purchases of beer by retail licensee, brewer and wholesaler.
66.28.080	Permit for music and dancing upon licensed premises.
66.28.090	Licensed premises open to inspection—Failure to allow.
66.28.100	Spirits to be labeled—Contents.
66.28.110	Wine to be labeled—Contents.
66.28.120	Malt liquor to be labeled—Contents.
66.28.130	Selling or serving of liquor to or consumption by standing or walking person.

Labels, unlawful refilling, etc., of trademarked containers: Chapter 19.76 RCW.

66.28.010 Manufacturers, importers and wholesalers barred from interest in retail business or location—Advances prohibited—"Financial interest" defined. No manufacturer, importer, or wholesaler, or person financially interested, directly or indirectly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, nor shall any manufacturer, importer, or wholesaler own

any of the property upon which such licensed persons conduct their business, nor shall any such licensed person, under any arrangement whatsoever, conduct his business upon property in which any manufacturer, importer, or wholesaler has any interest, nor shall any manufacturer, importer, or wholesaler advance moneys or moneys' worth to any such licensed person under any arrangement whatsoever, nor shall any such licensed person receive, under any arrangement whatsoever, any such advance of moneys or moneys' worth. No manufacturer, importer, or wholesaler shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or wholesaler sell at retail any liquor as herein defined: *Provided*, That nothing in this section shall prohibit a licensed brewer or domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine of its own production at retail on the brewery or winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.04 RCW: *Provided further*, That nothing in this section shall prohibit a licensed brewer or domestic winery, or a lessee of a licensed brewer or domestic winery, from being licensed as a class H restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a class H premises on the property on which the primary manufacturing facility of the licensed brewer or domestic winery is located or on contiguous property owned by the licensed brewer or domestic winery as prescribed by regulations adopted by the board pursuant to chapter 34.04 RCW.

Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.04 RCW manufacturers, wholesalers and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe. [1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90. Prior: 1909 c 84 § 1.]

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.28.020 Persons interested or dealing in distilled spirits barred from interest in brewery or beer wholesaler's business or location—Advances prohibited—Exceptions. No manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits, or person financially interested, directly or indirectly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in the business of any licensed

wine importer or wine wholesaler or licensed beer importer or beer wholesaler, nor shall any manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits own any of the property upon which such licensed persons conduct their business, nor shall any such licensed person under any arrangement whatsoever, conduct his business upon property in which any manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits has any interest, nor shall any manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits advance money or moneys' worth to any such licensed person under any arrangement whatsoever, nor shall any such licensed person receive, under any arrangement whatsoever, any such advance of money or moneys' worth. No manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits shall be eligible or receive or hold a license as a wine importer or wine wholesaler or beer importer or beer wholesaler under this title: *Provided*, That this section shall not be construed to require the divesting of any interest held by any person as of April 1, 1945, in the business of any manufacturer or wholesaler of distilled spirits or the business of any licensed brewer or beer wholesaler: *Provided further*, That the provisions of this section shall not apply to any liquor or beer importer, domestic winery or brewery which was licensed as of the date of passage of *this act: *Provided further*, That in the event of the sale of such importing business, winery or brewery to a manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits, or person financially interested, directly or indirectly, in such business, the exclusion of the foregoing proviso shall not apply.

Nothing in this section shall prohibit a licensed beer importer or beer wholesaler or licensed wine importer or wine wholesaler from being appointed or acting as agent, representative, or employee of a manufacturer of distilled spirits for the purpose of soliciting sales of the distilled spirits to the board and conducting goodwill activities at retail licensees as provided in RCW 66.24.310(5), and nothing in this section shall prohibit an agent, representative or employee of a manufacturer of distilled spirits, if otherwise qualified, from being licensed as a beer or wine importer or wholesaler. [1979 1st ex.s. c 23 § 1; 1969 ex.s. c 275 § 1; 1969 ex.s. c 178 § 12; 1945 c 48 § 2 (adding new section 90-A to 1933 ex.s. c 62); Rem. Supp. 1945 § 7306-90A.]

*Reviser's note: The effective date of "this act" [1969 ex.s. c 275] was August 11, 1969.

66.28.025 Persons interested in business property or location, etc., of wine wholesaler—Advances—Exceptions. No manufacturer of wine, or person financially interested, directly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in the business of any licensed wine wholesaler, nor shall any manufacturer of wine own any of the property upon which such licensed persons conduct their business, nor shall any such licensed person under any arrangement whatsoever, conduct his business upon property in which any manufacturer of wine has any interest, nor shall any manufacturer of wine advance

money or moneys' worth other than such credit allowances customarily extended in the ordinary course of such business between wholesalers and manufacturers on purchases of inventories to any such licensed person under any arrangement whatsoever, nor shall any such licensed person receive, under any arrangement whatsoever, any such advance of money or moneys' worth other than such credit allowances: *Provided*, That pursuant to rules promulgated by the board, in accordance with chapter 34.04 RCW, manufacturers, wholesalers and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; and perform such similar normal business services as the board may by regulation prescribe.

Provided further, That the provisions of this section shall not require the divesting of any such financial interest or arrangement which was held by any licensed liquor importer, beer importer, beer wholesaler, wine wholesaler, domestic winery or domestic brewery as of July 1, 1969: *Provided further*, That in the event of the sale of such business licensed as a liquor importer, beer importer, beer wholesaler, wine wholesaler, domestic winery or domestic brewery the exclusion of the foregoing proviso shall not apply: *And provided further*, That nothing in this section shall prohibit a domestic winery from being licensed as a wine wholesaler to wholesale wines of their own production if such production is seventy-five thousand gallons or less per year, based upon the winery's reports for the previous fiscal year. [1975-'76 2nd ex.s. c 62 § 1; 1975 1st ex.s. c 173 § 7; 1969 ex.s. c 275 § 3; 1969 ex.s. c 21 § 14.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.28.030 Responsibility of brewers, vintners, manufacturers holding certificate approval and importers for conduct of wholesaler—Penalties. Every licensed brewer, domestic winery, manufacturer holding a certificate of approval, licensed wine importer and licensed beer importer shall be responsible for the conduct of any licensed beer or wine wholesaler in selling, or contracting to sell, to retail licensees, beer or wine manufactured by such brewer, domestic winery, manufacturer holding a certificate of approval or imported by such beer or wine importer. Where the board finds that any licensed beer or wine wholesaler has violated any of the provisions of this title or of the regulations of the board in selling or contracting to sell beer or wine to retail licensees, the board may, in addition to any punishment inflicted or imposed upon such wholesaler, prohibit the sale of the brand or brands of beer or wine involved in such violation to any or all retail licensees within the trade territory usually served by such wholesaler for such period of time as the board may fix, irrespective of whether the brewer manufacturing such beer or the beer importer importing such beer or the domestic winery manufacturing such wine or the wine importer importing such wine or the certificate of approval holder manufacturing such beer or wine actually participated in such

violation. [1975 1st ex.s. c 173 § 8; 1969 ex.s. c 21 § 6; 1939 c 172 § 8 (adding new section 27-D to 1933 ex.s. c 62); RRS § 7306-27D.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

66.28.040 Giving away of liquor prohibited—Exceptions. No brewer, wholesaler, distiller, winery, importer, rectifier, or other manufacturer of liquor shall, within the state, by himself, his clerk, servant, or agent, give to any person any liquor; but nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board, and nothing in this section shall prevent a brewer from serving beer without charge, on the brewery premises, and nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises. [1975 1st ex.s. c 173 § 10; 1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306-30.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

66.28.045 Furnishing samples to board—Standards for accountability—Regulations. The legislature finds the furnishing of samples of liquor to the state liquor control board is an integral and essential part of the operation of the state liquor business. The legislature further finds that it is necessary to establish adequate standards for the accountability of the receipt, use and disposition of liquor samples. The board shall adopt appropriate regulations pursuant to chapter 34.04 RCW for the purpose of carrying out the provisions of this section. [1975 1st ex.s. c 173 § 9.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.28.050 Solicitation of orders prohibited—Exceptions. No person shall canvass for, solicit, receive, or take orders for the purchase or sale of any liquor, or act as agent for the purchase or sale of liquor except as authorized by RCW 66.24.310 as now or hereafter amended. Nothing in this section contained shall apply to agents dealing with the board or to the receipt or transmission of a telegram or letter by any telegraph agent or operator or post office employee in the ordinary course of his employment as such agent, operator or employee. [1975-'76 2nd ex.s. c 74 § 2; 1969 ex.s. c 21 § 8; 1937 c 217 § 4; 1933 ex.s. c 62 § 42; RRS § 7306-42.]

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

66.28.060 Distillers to make monthly report—No sale except to board. Every distillery licensed under this

title shall make monthly reports to the board pursuant to the regulations. No such distillery shall make any sale of spirits within the state of Washington except to the board. [1933 ex.s. c 62 § 26; RRS § 7306-26.]

66.28.070 Restrictions on purchases of beer by retail licensee, brewer and wholesaler. It shall be unlawful for any retail beer licensee to purchase beer, except from a duly licensed beer wholesaler, and it shall be unlawful for any brewer or beer wholesaler to purchase beer, except from a duly licensed beer wholesaler or beer importer. [1937 c 217 § 1(23H) (adding new section 23-H to 1933 ex.s. c 62); RRS § 7306-23H.]

66.28.080 Permit for music and dancing upon licensed premises. It shall be unlawful for any person, firm or corporation holding any retailer's license to permit or allow upon the premises licensed any music, dancing, or entertainment whatsoever, unless and until permission thereto is specifically granted by appropriate license or permit of the proper authorities of the city or town in which such licensed premises are situated, or the board of county commissioners, if the same be situated outside an incorporated city or town: *Provided*, That the words "music and entertainment," as herein used, shall not apply to radios or mechanical musical devices. [1969 ex.s. c 178 § 8; 1949 c 5 § 7; 1937 c 217 § 3 (adding new section 27-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-27A.]

Severability—1949 c 5: RCW 66.98.080.

66.28.090 Licensed premises open to inspection—Failure to allow. (1) All licensed premises used in the manufacture, storage, or sale of liquor, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business, shall at all times be open to inspection by any inspector or peace officer.

(2) Every person, being on any such premises and having charge thereof, who refuses or fails to admit an inspector or peace officer demanding to enter therein in pursuance of this section in the execution of his duty, or who obstructs or attempts to obstruct the entry of such inspector or officer of the peace, or who refuses to allow an inspector to examine the books of the licensee, or who refuses or neglects to make any return required by this title or the regulations, shall be guilty of a violation of this title. [1935 c 174 § 7; 1933 ex.s. c 62 § 52; RRS § 7306-52.]

66.28.100 Spirits to be labeled—Contents. Every person manufacturing spirits as defined in this title shall put upon all packages containing spirits so manufactured a distinctive label, showing the nature of the contents, the name of the person by whom the spirits were manufactured, the place where the spirits were manufactured, and showing the alcoholic content of such spirits. For the purpose of this section the contents of packages containing spirits shall be shown by the use of the words "whiskey", "rum", "brandy", and the like, on the outside of such packages. [1933 ex.s. c 62 § 46; RRS § 7306-46.]

66.28.110 Wine to be labeled—Contents. Every person producing, manufacturing, bottling or distributing wine shall put upon all packages a distinctive label such as will provide the consumer with adequate information as to the identity and quality of the product, the alcoholic content thereof, the net contents of the package, the name of the producer, manufacturer or bottler thereof and such other information as the board may by regulation prescribe. [1939 c 172 § 4; 1933 ex.s. c 62 § 45; RRS § 7306–45.]

66.28.120 Malt liquor to be labeled—Contents. Every person manufacturing or distributing malt liquor for sale within the state shall put upon all packages containing malt liquor so manufactured or distributed a distinctive label showing the nature of the contents, the name of the person by whom the malt liquor was manufactured, and the place where it was manufactured. For the purpose of this section, the contents of packages containing malt liquor shall be shown by the use of the word "beer," "ale," "stout," or "porter," on the outside of the packages. [1961 c 36 § 1; 1933 ex.s. c 62 § 44; RRS § 7306–44.]

66.28.130 Selling or serving of liquor to or consumption by standing or walking person. It shall not be unlawful for a retail licensee whose premises are open to the general public to sell, supply or serve liquor to a person for consumption on the licensed retail premises if said person is standing or walking, nor shall it be unlawful for such licensee to permit any said person so standing or walking to consume liquor on such premises: *Provided however,* That the retail licensee of such a premises may at his discretion, promulgate a house rule that no person shall be served nor allowed to consume liquor unless said person is seated. [1969 ex.s. c 112 § 2.]

Chapter 66.32

SEARCH AND SEIZURE

Sections

66.32.010	Possession of contraband liquor.
66.32.020	Search warrant—Search and seizure.
66.32.030	Service of warrant—Receipt for seized property.
66.32.040	Forfeiture of liquor directed if kept unlawfully.
66.32.050	Hearing.
66.32.060	Claimants may appear.
66.32.070	Judgment of forfeiture—Disposition of proceeds of property sold.
66.32.080	Forfeiture action no bar to criminal prosecution.
66.32.090	Seized liquor to be reported and delivered to board.

66.32.010 Possession of contraband liquor. Except as permitted by the board, no liquor shall be kept or had by any person within this state unless the package in which the liquor was contained had, while containing that liquor, been sealed with the official seal adopted by the board, except in the case of:

- (1) Liquor imported by the board; or
- (2) Liquor manufactured in the state for sale to the board or for export; or

(3) Beer, purchased in accordance with the provisions of law; or

(4) Wine or beer exempted in RCW 66.12.010. [1955 c 39 § 3. Prior: 1943 c 216 § 3(1); 1933 ex.s. c 62 § 33(1); Rem. Supp. 1943 § 7306–33(1).]

66.32.020 Search warrant—Search and seizure. If, upon the sworn complaint of any person, it is made to appear to any judge of the superior court, justice of the peace, or magistrate, that there is probable cause to believe that intoxicating liquor is being manufactured, sold, bartered, exchanged, given away, furnished, or otherwise disposed of or kept in violation of the provisions of this title, such judge, justice of the peace, or magistrate shall, with or without the approval of the prosecuting attorney, issue a warrant directed to a civil officer of the state duly authorized to enforce or assist in enforcing any law thereof, or to an inspector of the board, commanding him to search the premises, room, house, building, boat, vehicle, structure or place designated and described in the complaint and warrant, and to seize all intoxicating liquor there found, together with the vessels in which it is contained, and all implements, furniture, and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing, or otherwise disposing of the liquor, and to safely keep the same, and to make a return of the warrant within ten days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession they were found, if any, and if no person is found in the possession of the articles, the return shall so state. [1955 c 288 § 1; 1955 c 39 § 4. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306–33(2), part.]

66.32.030 Service of warrant—Receipt for seized property. A copy of the warrant, together with a detailed receipt for the property taken shall be served upon the person found in possession of any intoxicating liquor, furniture, or fixtures so seized, and if no person is found in possession thereof, a copy of the warrant and receipt shall be left in a conspicuous place upon the premises wherein they are found. [1955 c 39 § 5. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306–33(2), part.]

66.32.040 Forfeiture of liquor directed if kept unlawfully. All liquor seized pursuant to the authority of the warrant shall, upon adjudication that it was kept in violation of this title, be forfeited and upon forfeiture be delivered to the board. [1955 c 39 § 6. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 23(2), part; Rem. Supp. 1943 § 7306–33(2), part.]

66.32.050 Hearing. Upon the return of the warrant as provided herein, the judge, justice of the peace, or magistrate shall fix a time, not less than ten days, and not more than thirty days thereafter, for the hearing of the return, when he shall proceed to hear and determine whether or not the articles seized, or any part thereof, were used or in any manner kept or possessed by any

person with the intention of violating any of the provisions of this title. [1955 c 39 § 7. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

66.32.060 Claimants may appear. At the hearing, any person claiming any interest in any of the articles seized may appear and be heard upon filing a written claim setting forth particularly the character and extent of his interest, and the burden shall rest upon the claimant to show, by competent evidence, his property right or interest in the articles claimed, and that they were not used in violation of any of the provisions of this title, and were not in any manner kept or possessed with the intention of violating any of its provisions. [1955 c 39 § 8. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

66.32.070 Judgment of forfeiture—Disposition of proceeds of property sold. If, upon the hearing, the evidence warrants, or, if no person appears as claimant, the judge, justice of the peace, or magistrate shall thereupon enter a judgment of forfeiture, and order such articles destroyed forthwith: *Provided*, That if, in the opinion of the judge, justice of the peace, or magistrate, any of the forfeited articles other than intoxicating liquors are of value and adapted to any lawful use, the judge, justice of the peace, or magistrate shall, as a part of the order and judgment, direct that the articles other than intoxicating liquor be sold as upon execution by the officer having them in custody, and the proceeds of the sale after payment of all costs of the proceedings shall be paid into the liquor revolving fund. [1955 c 39 § 9. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

66.32.080 Forfeiture action no bar to criminal prosecution. Action under RCW 66.32.010 through 66.32.080 and the forfeiture, destruction, or sale of any articles thereunder shall not bar prosecution under any other provision. [1955 c 39 § 10. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

66.32.090 Seized liquor to be reported and delivered to board. In every case in which liquor is seized by a sheriff or constable of any county or by a police officer of any municipality or by a member of the Washington state patrol, or any other authorized peace officer or inspector, it shall be the duty of the sheriff or constable of any county, or chief of police of the municipality, or the chief of the Washington state patrol, as the case may be, to forthwith report in writing to the board of particulars of such seizure, and to immediately deliver over such liquor to the board, or its duly authorized representative, at such place as may be designated by it. [1935 c 174 § 8; 1933 ex.s. c 62 § 55; RRS § 7306-55.]

Chapter 66.36

ABATEMENT PROCEEDINGS

Sections

66.36.010

Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen.

66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen. Any room, house, building, boat, vehicle, structure or place, except premises licensed under this title, where liquor, as defined in this title, is manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such a place, are hereby declared to be a common nuisance. The prosecuting attorney of the county in which such nuisance is situated shall institute and maintain an action in the superior court of such county in the name of the state of Washington to abate and perpetually enjoin such nuisance. The plaintiff shall not be required to give bond in such action, and restraining orders, temporary injunctions and permanent injunctions may be granted in said cause as in other injunction proceedings, and upon final judgment against the defendant, such court may also order that said room, house, building, boat, vehicle, structure or place, shall be closed for a period of one year; or until the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal sum of not less than one thousand dollars payable to the state of Washington, and conditioned that liquor will not thereafter be manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereon or therein in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and that he will pay all fines, costs and damages assessed against him for any violation of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. If any condition of such bond be violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

In all cases where any person has been convicted of a violation of this title or the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor an action may be brought in the superior court of the county in which the premises are situated, to abate as a nuisance any real estate or other property involved in the commission of said offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and prima facie evidence that the room, house, building, boat, vehicle, structure or place against which such action is brought is a public nuisance. [1939 c 172 § 9 (adding new section 33-A to 1933 ex.s. c 62); RRS §

7306-33A. Formerly RCW 66.36.010 through 66.36.040.]

(adding new section 83-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-83A.]

Severability—1949 c 5: RCW 66.98.080.

Chapter 66.40 LOCAL OPTION

Sections

66.40.010	Local option units.
66.40.020	Election may be held.
66.40.030	Class H license election.
66.40.040	Petition for election—Contents—Procedure— Signatures, filing, form, copies, fees, etc.—Public inspection.
66.40.100	Check of petitions.
66.40.110	Form of ballot.
66.40.120	Canvass of votes—Effect.
66.40.130	Effect of election as to class H licenses.
66.40.140	Certificate of result to board—Grace period— Permitted activities.
66.40.150	Concurrent liquor elections in same election unit prohibited.

66.40.010 Local option units. For the purpose of an election upon the question of whether the sale of liquors shall be permitted, the election unit shall be any incorporated city or town, or all that portion of any county not included within the limits of incorporated cities and towns. [1957 c 263 § 3. Prior: (i) 1933 ex.s. c 62 § 82; RRS § 7306-82. (ii) 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Severability—1949 c 5: RCW 66.98.080.

66.40.020 Election may be held. Within any unit referred to in RCW 66.40.010, upon compliance with the conditions hereinafter prescribed, there may be held, at the time and as a part of any general election, an election upon the question of whether the sale of liquor shall be permitted within such unit; and in the event that any such election is held in any such unit, no other election under this section shall be held prior to the next succeeding general election. [1933 ex.s. c 62 § 83; RRS § 7306-83.]

66.40.030 Class H license election. Within any unit referred to in RCW 66.40.010, there may be held a separate election upon the question of whether the sale of liquor under class H licenses, shall be permitted within such unit. The conditions and procedure for holding such election shall be those prescribed by RCW 66.40.020, 66.40.040, 66.40.100, 66.40.110 and 66.40.120. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "against the sale of liquor under class H licenses", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and after ninety days from and after the date of the canvass, it shall not be lawful for licensees to maintain and operate premises therein licensed under class H licenses. Elections held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, shall be limited to the question of whether the sale of liquor by means other than under class H licenses shall be permitted within such election unit. [1949 c 5 § 12

66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection. Any unit referred to in RCW 66.40.010 may hold such election upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit, upon the filing with the county auditor of the county within which such unit is located, of a petition subscribed by qualified electors of the unit equal in number to at least thirty percent of the electors voting at the last general election within such unit. Such petition shall designate the unit in which the election is desired to be had, the date upon which the election is desired to be held, and the question that is desired to be submitted. The persons signing such a petition shall state their post office address, the name or number of the precinct in which they reside, and in case the subscriber be a resident of a city, the street and house number, if any, of his residence, and the date of signature. Said petition shall be filed not less than sixty days nor more than ninety days prior to the date upon which the election is to be held. No signature shall be valid unless the above requirements are complied with, and unless the date of signing the same is less than ninety days preceding the date of filing. No signature shall be withdrawn after the filing of such petition. Such petition may consist of one or more sheets and shall be fastened together as one document, filed as a whole, and when filed shall not be withdrawn or added to. Such petition shall be a public document and shall be subject to the inspection of the public. Upon the request of anyone filing such a petition and paying, or tendering to the county auditor one dollar for each hundred names, or fraction thereof, signed thereto, together with a copy thereof, said county auditor shall immediately compare the original and copy and attach to such copy and deliver to such person his official certificate that such copy is a true copy of the original, stating the date when such original was filed in his office; and said officer shall furnish, upon the demand of any person, a copy of said petition, upon payment of the same fee required for the filing of original petitions. [1933 ex.s. c 62 § 84; RRS § 7306-84. Formerly RCW 66.40.040 through 66.40.090.]

66.40.100 Check of petitions. Upon the filing of a petition as hereinbefore provided, the county auditor with whom it is filed shall cause the names on said petition to be compared with the names on the voters' official registration records provided for by law with respect to such unit. The officer or deputy making the comparison shall place his initials in ink opposite the signatures of those persons who are shown by such registration records to be legal voters and shall certify that the signatures so initialed are the signatures of legal voters of the state of Washington and of said unit, and shall sign such certificate. In the event that said petition, after such comparison, shall be found to have been signed by the percentage of legal voters of said unit referred to in RCW 66.40.040, the question shall be placed upon the

ballot at the next general election. [1933 ex.s. c 62 § 85; RRS § 7306-85.]

66.40.110 Form of ballot. Upon the ballot to be used at such general election the question shall be submitted in the following form:

"Shall the sale of liquor be permitted within ----- (here specify the unit in which election is to be held)." Immediately below said question shall be placed the alternative answers, as follows:

"For sale of liquor ()
 Against sale of liquor ()."

Each person desiring to vote in favor of permitting the sale of liquor within the unit in which the election is to be held shall designate his choice beside the words "For sale of liquor", and those desiring to vote against the permitting of the sale of liquor within such unit shall designate their choice beside the words "Against sale of liquor", and the ballot shall be counted accordingly. [1933 ex.s. c 62 § 86; RRS § 7306-86.]

66.40.120 Canvass of votes—Effect. The returns of any such election shall be canvassed in the manner provided by law. If the majority of qualified electors voting upon said question at said election shall have voted "For sale of liquor" within the unit in which the election is held, the sale of liquor may be continued in accordance with the provisions of this title. If the majority of the qualified electors voting on such question at any such election shall vote "Against sale of liquor", then, within thirty days after such canvass no sale or purchase of liquor, save as herein provided, shall be made within such unit until such permission so to do be subsequently granted at an election held for that purpose under the provisions of this title. [1933 ex.s. c 62 § 87; RRS § 7306-87.]

66.40.130 Effect of election as to class H licenses. Ninety days after December 2, 1948, class H licenses may be issued in any election unit in which the sale of liquor is then lawful. No class H license shall be issued in any election unit in which the sale of liquor is forbidden as the result of an election held under RCW 66.40-.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, unless a majority of the qualified electors in such election unit voting upon this initiative at the general election in November, 1948, vote in favor of this initiative, or unless at a subsequent general election in which the question of whether the sale of liquor under class H licenses shall be permitted within such unit is submitted to the electorate, as provided in RCW 66.40.030, a majority of the qualified electors voting upon such question vote "for the sale of liquor under class H licenses." [1949 c 5 § 13 (adding new section 87-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-87A.]

Severability—1949 c 5: RCW 66.98.080.

66.40.140 Certificate of result to board—Grace period—Permitted activities. Whenever a majority of qualified voters voting upon said question in any such

unit shall have voted "Against sale of liquor", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and thereafter, except as hereinafter provided, it shall not be lawful for a liquor store to be operated therein nor for licensees to maintain and operate licensed premises therein except as hereinafter provided:

(1) As to any stores maintained by the board within any such unit at the time of such licensing, the board shall have a period of thirty days from and after the date of the canvass of the vote upon such election to continue operation of its store or stores therein.

(2) As to any premises licensed hereunder within any such unit at the time of such election, such licensee shall have a period of sixty days from and after the date of the canvass of the vote upon such election in which to discontinue operation of its store or stores therein.

(3) Nothing herein contained shall prevent any distillery, brewery, rectifying plant or winery or the licensed operators thereof from selling its manufactured product, manufactured within such unit, outside the boundaries thereof.

(4) Nothing herein contained shall prevent any person residing in any unit in which the sale of liquor shall have been forbidden by popular vote as herein provided, who is otherwise qualified to receive and hold a permit under this title, from lawfully purchasing without the unit and transporting into or receiving within the unit, liquor lawfully purchased by him outside the boundaries of such unit. [1933 ex.s. c 62 § 88; RRS § 7306-88.]

66.40.150 Concurrent liquor elections in same election unit prohibited. No election in any unit referred to in RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit shall be held at the same time as an election is held in the same unit upon the question of whether the sale of liquor under the provisions of RCW 66.40.030 shall be permitted. In the event valid and sufficient petitions are filed which would otherwise place both questions on the same ballot that question upon which the petition was filed with the county auditor first shall be placed on the ballot to the exclusion of the other. [1949 c 93 § 1 (adding new section 88-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-88A.]

Chapter 66.44

ENFORCEMENT—PENALTIES

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Annual report of cities and towns as to liquor law violations: RCW 35.21.170.

Minors prohibited to enter bars or taverns: RCW 26.28.080.

Sale or gift of tobacco or intoxicating liquor to persons under certain age is gross misdemeanor: RCW 26.28.080.

State institutions, bringing in liquor prohibited: RCW 72.23.300.

66.44.010 Local officers to enforce law—Authority of board—Liquor enforcement officers. (1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the

court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power to arrest without a warrant any person or persons found in the act of violating any of the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. [1969 ex.s. c 199 § 28; 1939 c 172 § 5; 1935 c 174 § 11; 1933 ex.s. c 62 § 70; RRS § 7306-70. Formerly RCW 66.44.010 through 66.44.030.]

66.44.040 Sufficiency of description of offenses in complaints, informations, process, etc. In describing the offense respecting the sale, or keeping for sale or other disposal, of liquor, or the having, keeping, giving, purchasing or consumption of liquor in any information, summons, conviction, warrant, or proceeding under this title, it shall be sufficient to simply state the sale, or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of liquor, without stating the name or kind of such liquor or the price thereof, or to whom it was sold or disposed of, or by whom consumed, or from whom it was purchased or received; and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. [1933 ex.s. c 62 § 57; RRS § 7306-57.]

66.44.050 Description of offense in words of statutes—Proof required. The description of any offense under this title, in the words of this title, or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description

of the offense in this title, may be proved by the defendant, but need not be specified or negated in the information; but if it is so specified or negated, no proof in relation to the matter so specified or negated shall be required on the part of the informant or complainant. [1933 ex.s. c 62 § 58; RRS § 7306-58.]

66.44.060 Proof of unlawful sale establishes prima facie intent. In any proceeding under this title, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this title. [1933 ex.s. c 62 § 59; RRS § 7306-59.]

66.44.070 Certified analysis is prima facie evidence of alcoholic content. A certificate, signed by any person appointed or designated by the board in writing as an analyst, as to the percentage of alcohol contained in any liquid, drink, liquor, or combination of liquors, when produced in any court or before any court shall be prima facie evidence of the percentage of alcohol contained therein. [1933 ex.s. c 62 § 60; RRS § 7306-60.]

66.44.080 Service of process on corporation. In all prosecutions, actions, or proceedings under the provisions of this title against a corporation, every summons, warrant, order, writ or other proceeding may be served on the corporation in the same manner as is now provided by law for service of civil process. [1933 ex.s. c 62 § 61; RRS § 7306-61.]

66.44.090 Acting without license. Any person doing any act required to be licensed under this title without having in force a license issued to him shall be guilty of a gross misdemeanor. [1955 c 289 § 2. Prior: (i) 1933 ex.s. c 62 § 28; RRS § 7306-28. (ii) 1939 c 172 § 6(1); 1935 c 174 § 6(1); 1933 ex.s. c 62 § 92(1); RRS § 7306-92(1).]

66.44.100 Opening or consuming liquor in public place. Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a misdemeanor, and on conviction therefor shall be fined not more than ten dollars. [1933 ex.s. c 62 § 34; RRS § 7306-34.]

66.44.110 Intoxication in public place. No person who is intoxicated shall be or remain in any public place, and every person who violates any provision of this section shall be liable, on conviction for a first offense to a penalty of not more than ten dollars; for a second offense to a penalty of not more than twenty-five dollars; and for a third or subsequent offense to imprisonment for not more than thirty days, with or without hard labor, without the option of a fine. [1933 ex.s. c 62 § 35; RRS § 7306-35.]

66.44.120 Unlawful use of seal. No person other than an employee of the board shall keep or have in his possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a vendor or store employee; nor shall

any person keep or have in his possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed or otherwise marked.

Every person who wilfully violates any provision of this section shall be guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine; for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine; for a third offense or subsequent offenses to imprisonment in the state penitentiary for not less than one year nor more than two years. [1933 ex.s. c 62 § 47; RRS § 7306-47.]

66.44.130 Sales of liquor by drink or bottle. Except as otherwise provided in this title, every person who sells by the drink or bottle, any liquor shall be guilty of a violation of this title. [1955 c 289 § 3. Prior: 1939 c 172 § 6(2); 1935 c 174 § 15(2); 1933 ex.s. c 62 § 92(2); RRS § 7306-92(2).]

66.44.140 Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash. Every person who shall sell or offer for sale, or transport in any manner, any spirituous liquor, without government stamp or seal attached thereto, or who shall operate or shall have in his possession without a license, any still or other device for the production of spirituous liquor, or shall have in his possession or under his control any mash capable of being distilled into spirituous liquor, shall be guilty of a gross misdemeanor and upon conviction thereof shall upon his first conviction be fined not less than five hundred dollars and confined in the county jail not less than six months, and upon second and subsequent conviction shall be fined not less than one thousand dollars and confined in the county jail not less than one year. [1955 c 289 § 4. Prior: 1939 c 172 § 6(3); 1935 c 174 § 15(3); 1933 ex.s. c 62 § 92(3); RRS § 7306-92(3).]

66.44.150 Buying liquor illegally. If any person in this state buys alcoholic beverages from any person other than the board, a state liquor store, or some person authorized by the board to sell them, he shall be guilty of a misdemeanor. [1955 c 289 § 5. Prior: 1939 c 172 § 6(4); 1935 c 174 § 15(4); 1933 ex.s. c 62 § 92(4); RRS § 7306-92(4).]

66.44.160 Illegal possession, transportation of alcoholic beverages. Except as otherwise provided in this title, any person who has or keeps or transports alcoholic beverages other than those purchased from the board, a state liquor store, or some person authorized by the board to sell them, shall be guilty of a violation of this title. [1955 c 289 § 6. Prior: 1939 c 172 § 6(5); 1935 c 174 § 15(5); 1933 ex.s. c 62 § 92(5); RRS § 7306-92(5).]

66.44.170 Illegal possession of liquor with intent to sell—Prima facie evidence, what is. Any person who keeps or possesses liquor upon his person or in any place, or on premises conducted or maintained by him as principal or agent with the intent to sell it contrary to provisions of this title, shall be guilty of a violation of this title. The possession of liquor by the principal or agent on premises conducted or maintained, under federal authority, as a retail dealer in liquors, shall be prima facie evidence of the intent to sell liquor. [1955 c 289 § 7. Prior: 1937 c 144 § 1 (adding new section 92A to 1933 ex.s. c 62); RRS § 7306–92A.]

66.44.175 Violations of law. Every person who violates any provision of this title or the regulations shall be guilty of a violation of this title, whether otherwise declared or not. [1933 ex.s. c 62 § 91; RRS § 7306–91.]

66.44.180 General penalties—Jurisdiction for violations. Every person guilty of a violation of this title for which no penalty has been specifically provided shall be liable, on conviction, for a first offense to a penalty of not more than three hundred dollars, or to imprisonment for not more than two months, with or without hard labor, or both; for a second offense to imprisonment for not more than six months, with or without hard labor; and for a third or subsequent offense to imprisonment for not more than one year, with or without hard labor. If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than two thousand dollars, and for a second or subsequent offense to a penalty of not more than three thousand dollars, or to forfeiture of its corporate license, or both.

Every justice of the peace and magistrate shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor. [1935 c 174 § 16; 1933 ex.s. c 62 § 93; RRS § 7306–93.]

66.44.190 Sales on university grounds prohibited—Exceptions. Except at the faculty center as so designated by the university board of regents to the Washington state liquor control board who may issue a class H club license therefor, it shall be unlawful to sell any intoxicating liquors, with or without a license on the grounds of the University of Washington, otherwise known and described as follows: Fractional section 16, township 25 north, range 4 east of Willamette Meridian except to the extent allowed under banquet permits issued pursuant to RCW 66.24.490. [1979 1st ex.s. c 104 § 1; 1975 1st ex.s. c 68 § 1; 1967 c 21 § 1; 1951 c 120 § 1; 1933 ex.s. c 49 § 1; 1895 c 75 § 1; RRS § 5100.]

Application of Title 66 RCW to deleted territory: "All of the provisions of Title 66 RCW and the rules and regulations promulgated thereunder shall fully apply to the territory deleted from RCW 66.44.190 by section 1 of this 1967 amendatory act." [1967 c 21 § 2.]

66.44.200 Sales to persons apparently under the influence of liquor. No person shall sell any liquor to any person apparently under the influence of liquor. [1933 ex.s. c 62 § 36; RRS § 7306–36.]

66.44.210 Obtaining liquor for ineligible person. Except in the case of liquor administered by a physician or dentist or sold upon a prescription in accordance with the provisions of this title, no person shall procure or supply, or assist directly or indirectly in procuring or supplying, liquor for or to anyone whose permit is suspended or has been canceled. [1933 ex.s. c 62 § 38; RRS § 7306–38.]

66.44.240 Drinking in public conveyance—Penalty against carrier. Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, shall be guilty of a misdemeanor. [1909 c 249 § 442; RRS § 2694.]

Reviser's note: Caption for 1909 c 249 § 442 reads as follows: "Sec. 442. Common Carrier Not to Permit Drinking in Public Conveyance."

66.44.250 Drinking in public conveyance—Penalty against individual. Every person who shall drink any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, shall be guilty of a misdemeanor. [1909 c 249 § 441; RRS § 2693.]

Reviser's note: Caption for 1909 c 249 § 441 reads as follows: "Sec. 441. Prohibiting Drinking in Public Conveyances."

66.44.265 Candidates giving or purchasing liquor on election day prohibited. It shall be unlawful for a candidate for office or for nomination thereto whose name appears upon the ballot at any election to give to or purchase for another person, not a member of his or her family, any liquor in or upon any premises licensed by the state for the sale of any such liquor by the drink during the hours that the polls are open on the day of such election. [1971 ex.s. c 112 § 2.]

66.44.270 Furnishing liquor to minors—Possession, use. Except in the case of liquor given or permitted to be given to a person under the age of twenty-one years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, no person shall give, or otherwise supply liquor to any person under the age of twenty-one years, or permit any person under that age to consume liquor on his premises or on any premises under his control. It is unlawful for any person under the age of twenty-one years to acquire or have in his possession or consume any liquor except as in this section provided and except when such liquor is being used in connection with religious services.

Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture, shall not be a disqualification of such person to acquire a license to sell or dispense any liquor after such person shall have attained the age of twenty-one years. [1955 c 70 § 2. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306–37(1). Prior: Code 1881 § 939; 1877 p 205 § 5.]

66.44.280 Minor applying for permit. Every person under the age of twenty-one years who makes application for a permit shall be guilty of an offense against this title. [1955 c 70 § 3. Prior: 1935 c 174 § 6(2); 1933 ex.s. c 62 § 37(2); RRS § 7306-37(2).]

66.44.290 Minor purchasing or attempting to purchase liquor. Every person under the age of twenty-one years who purchases or attempts to purchase liquor shall be guilty of a violation of this title. [1965 c 49 § 1; 1955 c 70 § 4. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1).]

66.44.291 Minor purchasing or attempting to purchase liquor—Penalty against persons between ages of eighteen and twenty, inclusive. Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of RCW 66.44.290 shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a term of not more than thirty days, or both. [1965 c 49 § 2.]

66.44.292 Sales to minors by licensee or employee—Board transcript to prosecuting attorney—Charges against minors. The Washington state liquor control board shall furnish a certified transcript of any hearing or hearings held, wherein any licensee or his employee is found to have sold liquor to a minor, to the prosecuting attorney of the county in which the sale took place, upon which the prosecuting attorney may formulate charges against said minor or minors for such violation of *this act as may appear. The transcript shall not be admissible in evidence at the trial upon any such charges, except to impeach or contradict the testimony of a witness. [1965 c 49 § 3.]

*Reviser's note: *this act* [1965 c 49] consists of RCW 66.44.291, 66.44.292, and the 1965 amendment to RCW 66.44.290.

66.44.300 Treating minor, etc., in public place where liquor sold. Any person who invites a minor into a public place where liquor is sold and treats, gives or purchases liquor for such minor, or permits a minor to treat, give or purchase liquor for him; or holds out such minor to be over the age of twenty-one years to the owner of the liquor establishment shall be guilty of a misdemeanor. [1941 c 78 § 1; Rem. Supp. 1941 § 7306-37A.]

66.44.310 Minors frequenting taverns—Misrepresentation of age—Classification of licensees. (1) It shall be a misdemeanor,

(a) To serve or allow to remain on the premises of any tavern any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain on the premises of any tavern;

(c) For any person under the age of twenty-one years to represent his age as being twenty-one or more years for the purpose of securing admission to or remaining on the premises of any tavern.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify the various licensees, as taverns or otherwise, within the

meaning of this title, except bona fide restaurants, dining rooms and cafes serving commercial food to the public shall not be classified as taverns during the hours such food service is made available to the public. [1943 c 245 § 1 (adding new section 36-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-36A. Formerly RCW 66.24-.130 and 66.44.310.]

66.44.315 Musicians eighteen years and older permitted to enter and remain upon licensed premises during employment. Notwithstanding the provisions of RCW 26.28.080 as now or hereafter amended, it is lawful for professional musicians, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians.

This section shall not be construed as permitting the sale or distribution of any alcoholic beverages to any person under the age of twenty-one years. [1969 ex.s. c 250 § 1.]

66.44.316 Musicians eighteen years and over permitted to enter and remain upon licensed premises during employment. Notwithstanding the provisions of RCW 26.28.080 as now or hereafter amended, it is lawful for professional musicians, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians.

This section shall not be construed as permitting the sale or distribution of any alcoholic beverages to any person under the age of nineteen years. [1973 1st ex.s. c 96 § 1.]

66.44.320 Sales of liquor to minors a violation. Every person who shall sell any intoxicating liquor to any minor shall be guilty of a violation of Title 66 RCW. [1973 1st ex.s. c 209 § 19; 1933 c 2 § 1; 1929 c 200 § 1; RRS § 7328-1.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.44.325 Unlawful transfer to a minor of an identification of age. Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcoholic beverages shall be guilty of a misdemeanor: *Provided*, That corroborative testimony of a witness other than the minor shall be a condition precedent to conviction. [1961 c 147 § 1.]

Cards of identification: RCW 66.20.160-66.20.210.

66.44.330 Prosecutions to be reported by prosecuting attorney and police court. See RCW 35.21.170 and 36.27.020(13).

66.44.340 Employees eighteen years and over allowed to sell and carry beer and wine for class E and/or F licensed employers. Employers holding class E and/or F licenses exclusively are permitted to allow their employees, between the ages of eighteen and twenty-one years, to sell beer or wine in, on or about any establishment

holding a class E and/or class F license exclusively: *Provided*, That there is direct supervision by an adult twenty-one years of age or older in an adjacent check stand: *Provided*, That minor employees may make deliveries of beer and/or wine purchased from licensees holding class E and/or class F licenses exclusively, when delivery is made to cars of customers adjacent to such licensed premises but only, however, when the minor employee is accompanied by the purchaser. [1969 ex.s. c 38 § 1.]

66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for class A, C, D and/or H licensed employers. Notwithstanding provisions of RCW 66.44.310, employees of class A, C, D and/or H licensees eighteen years of age and over may take orders for, serve and sell liquor in any part of the licensed premises except cocktail lounges, bars, or other areas classified by the Washington state liquor control board as off-limits to persons under twenty-one years of age: *Provided*, That such employees may enter such restricted areas for the following purposes: To pick up liquor for service in other parts of the licensed premises, to perform clean up work, to set up and arrange tables, and to deliver supplies: *Provided further*, That such employees shall remain in the areas off-limits to minors no longer than is necessary to carry out their aforementioned duties: *Provided further*, That such employees shall not be permitted to perform activities or functions of a bartender. [1975 1st ex.s. c 204 § 1.]

Chapter 66.98 CONSTRUCTION

Sections

66.98.010	Short title.
66.98.020	Severability and construction—1933 ex.s. c 62.
66.98.030	Effect of act on certain laws—1933 ex.s. c 62.
66.98.040	Effective date and application—1937 c 217.
66.98.050	Effective date and application—1939 c 172.
66.98.060	Rights of class H licensees—1949 c 5.
66.98.070	Regulations by board—1949 c 5.
66.98.080	Severability—1949 c 5.

66.98.010 Short title. This act may be cited as the "Washington State Liquor Act." [1933 ex.s. c 62 § 1; RRS § 7306-1.]

66.98.020 Severability and construction—1933 ex.s. c 62. If any clause, part or section of this act shall be adjudged invalid, such judgment shall not affect nor invalidate the remainder of the act, but shall be confined in its operation to the clause, part or section directly involved in the controversy in which such judgment was rendered. If the operation of any clause, part or section of this act shall be held to impair the obligation of contract, or to deny to any person any right or protection secured to him by the Constitution of the United States of America, or by the Constitution of the state of Washington, it is hereby declared that, had the invalidity of such clause, part or section been considered at the time of the enactment of this act, the remainder of the act would nevertheless have been adopted without such

and any and all such invalid clauses, parts or sections. [1933 ex.s. c 62 § 94; RRS § 7306-94.]

66.98.030 Effect of act on certain laws—1933 ex.s. c 62. Nothing in this act shall be construed to amend or repeal chapter 2 of the Laws of 1933, or any portion thereof. [1933 ex.s. c 62 § 95; RRS § 7306-95.]

Reviser's note: 1933 c 2 referred to herein consisted of two sections, section 1 of which is codified as RCW 66.44.320 and section 2 was a repeal of earlier liquor laws.

66.98.040 Effective date and application—1937 c 217. This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: *Provided, however*, That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1937: *And provided further*, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1937 c 217 § 8; RRS § 7306-97.]

Reviser's note: 1933 ex.s. c 62 referred to herein is the basic liquor act codified in this title; the 1937 act in which it appears was amendatory thereof.

66.98.050 Effective date and application—1939 c 172. This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: *Provided, however*, That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935 and chapters 62 and 217, Laws of 1937, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1939: *And provided further*, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1939 c 172 § 11; RRS § 7306-97a.]

Reviser's note: 1933 ex.s. c 62 referred to herein is the basic liquor act codified in this title; the 1939 act in which it appears was amendatory thereof.

66.98.060 Rights of class H licensees—1949 c 5. Notwithstanding any provisions of chapter 62 of the Laws of 1933, extraordinary session, as last amended, or of any provisions of any other law which may otherwise be applicable, it shall be lawful for the holder of a class H license to sell beer, wine and spirituous liquor in this state in accordance with the terms of this act. [1949 c 5 § 14; No RRS. Formerly: RCW 66.24.460.]

Reviser's note: 1933 ex.s. c 62, referred to in section 14 of the liquor by the drink initiative of 1949, is the basic liquor act codified in this title.

66.98.070 Regulations by board—1949 c 5. For the purpose of carrying into effect the provisions of this act, the board shall have the same power to make regulations not inconsistent with the spirit of this act as is provided by section 79 of chapter 62 of the Laws of 1933, extraordinary session. [1949 c 5 § 15; No RRS. Formerly: RCW 66.24.470.]

Reviser's note: "section 79 of chapter 62 of the Laws of 1933, extraordinary session", referred to in section 15 of the liquor by the drink initiative of 1949, is codified, as amended, in RCW 66.08.030.

66.98.080 Severability—1949 c 5. If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as whole or any section, provision, or part thereof not adjudged to be invalid. [1949 c 5 § 17; No RRS.]

Reviser's note: This applies to RCW 66.08.220, 66.24.400, 66.24-.410, 66.24.420, 66.24.430, 66.24.440, 66.40.030, 66.40.130, 66.98.060, 66.98.070, and the 1949 amendments to RCW 66.08.012, 66.08.014, 66.08.180, 66.24.450, and 66.28.080.

Title 67

ATHLETICS, SPORTS AND ENTERTAINMENT

Chapters

- 67.04** **Baseball.**
- 67.08** **Boxing and wrestling.**
- 67.12** **Dancing and dance halls—Billiards, pool and bowling.**
- 67.14** **Billiard tables, bowling alleys and miscellaneous games—1873 Act.**
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- 67.24** **Fraud in sporting contest.**
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auditoriums, art museums, swimming pools, etc.—Power to acquire: RCW 35.21.020, 35A.11.020.

powers vested in legislative bodies of noncharter and charter code cities: RCW 35A.11.020.

Common carriers—Commutation or excursion tickets: RCW 81.28.080.

Controlled substances: Chapter 69.50 RCW.

Counties

admissions tax: Chapter 36.38 RCW.

fairs and poultry shows: Chapter 36.37 RCW.

joint armory sites: RCW 36.64.050.

parks and recreational facilities: Chapter 36.68 RCW.

recreation districts act for counties: Chapter 36.69 RCW.

southwest Washington fair: Chapter 36.90 RCW.

County park and recreation service areas—Use of local service funds in exercise of powers enumerated: Chapter 36.68 RCW.

Doors of buildings used by public—Requirements—Penalty: RCW 70.54.070.

Driving delinquencies: Chapter 46.61 RCW.

Earthquake resistance standards (public meeting places): Chapter 70.86 RCW.

Excise taxes

certificates for mechanical devices: RCW 82.32.040.

motor vehicle fuel tax—Exemptions—Tourist: RCW 82.36.230.

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Fireworks: Chapter 70.77 RCW.

First class cities

additional powers—Auditoriums, art museums: RCW 35.22.290.

leasing of land for auditoriums, etc.: RCW 35.22.300.

powers enumerated (relating to recreation or entertainment): RCW 35.22.280(11), (30), (31), (32), (33) and (34).

Food fish and shellfish

department of fisheries: Chapter 75.08 RCW.

taking fish, shellfish: Chapter 75.12 RCW.

Game and game fish: Title 77 RCW.

Horse racing commission: Chapter 67.16 RCW.

Intoxication and drunkards: Chapter 71.08 RCW.

Law against discrimination (public meeting places): Chapter 49.60 RCW.

Limitation on liability of landowners for injuries to recreation users: RCW 4.24.210.

Marine recreation land act: Chapter 43.99 RCW.

Metropolitan municipal corporations: Chapter 35.58 RCW.

Metropolitan park districts: Chapter 35.61 RCW.

Militia

armories and rifle ranges: Chapter 38.20 RCW.

membership in clubs, etc.: RCW 38.40.110.

social corporations may be formed: RCW 38.40.130.

Multi-purpose community centers: Chapter 35.59 RCW.

Narcotic drugs: Chapter 69.50 RCW.

Parks and recreation commission: Chapter 43.51 RCW.

Physical education in schools and higher institutions: RCW 28A.05.030, 28A.05.040.

Public lands

director of conservation and development to assist city parks: RCW 79.08.100.

exchange of lands to secure city parks and playgrounds: RCW 79.08.090.

grant of lands for city park or playground purposes: RCW 79.08.080.

use of public lands for state or city park purposes: RCW 79.08.102–79.08.106.

Public schools—Division of recreation: Chapter 28A.14 RCW.

Real property beneath air space dedicated to public body for stadium facilities—Exemption from property taxes: RCW 84.36.270–84.36.290.

Regulation of motor boats: Chapter 88.12 RCW.

Second class cities—Powers enumerated (relating to recreation or entertainment): RCW 35.23.440(2), (6), (16), (39), (46), (53) and (54).

State agency for surveys and maps: Chapter 58.24 RCW.

Streets—Bicycles—Paths: Chapter 35.75 RCW.

Swimming pools: Chapter 70.90 RCW.

Third class cities

additional powers—Acquisition of property for municipal purposes: RCW 35.24.300.

powers enumerated (relating to recreation or entertainment): RCW 35.24.290(7) and (17).

Tidelands, shorelands and harbor areas granted for park purposes: Chapter 79.16 RCW.

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parks: RCW 35.27.400.

powers enumerated (relating to recreation or entertainment): RCW 35.27.370(9) and (13).

Training animals to fight—Attending exhibitions: RCW 16.52.130.

Unclassified cities—Additional powers (relating to recreation or entertainment): RCW 35.30.010(4).

Use of playgrounds for other than school purposes: RCW 28A.58.048.

Vacation of streets or alleys abutting on bodies of water, prohibited unless to be used for recreational purposes, etc.: RCW 35.79.030.

Watercraft adrift: Chapter 88.20 RCW.

Wharves and landings—Right of riparian owner to construct:
RCW 88.24.010.

Chapter 67.04 BASEBALL

Sections

67.04.010	Penalty for bribery in relation to baseball game.
67.04.020	Penalty for acceptance of bribe.
67.04.030	Elements of offense outlined.
67.04.040	"Bribe" defined.
67.04.050	Corrupt baseball playing—Penalty.
67.04.060	Venue of action.
67.04.070	Bonus or extra compensation.
67.04.080	Scope of provisions as to bribes.
67.04.090	Baseball contracts with minors—Definitions.
67.04.100	Contract with minor void unless approved.
67.04.110	Approval by prosecuting attorney.
67.04.120	Basis of approval.
67.04.130	Effect of disapproval.
67.04.140	Negotiations with minor prohibited.
67.04.150	Penalty for violation of provisions as to contracts with minors.

Infants: Chapter 26.28 RCW.

67.04.010 Penalty for bribery in relation to baseball game. Any person who shall bribe or offer to bribe, any baseball player with intent to influence his play, action or conduct in any baseball game, or any person who shall bribe or offer to bribe any umpire of a baseball game, with intent to influence him to make a wrong decision or to bias his opinion or judgment in relation to any baseball game or any play occurring therein, or any person who shall bribe or offer to bribe any manager, or other official of a baseball club, league or association, by whatsoever name called, conducting said game of baseball to throw or lose a game of baseball, shall be guilty of a gross misdemeanor. [1921 c 181 § 1; RRS § 2321-1.]

67.04.020 Penalty for acceptance of bribe. Any baseball player who shall accept or agree to accept, a bribe offered for the purpose of wrongfully influencing his play, action or conduct in any baseball game, or any umpire of a baseball game who shall accept or agree to accept a bribe offered for the purpose of influencing him to make a wrong decision, or biasing his opinions, rulings or judgment with regard to any play, or any manager of a baseball club, or club or league official, who shall accept, or agree to accept, any bribe offered for the purpose of inducing him to lose or cause to be lost any baseball game, as set forth in RCW 67.04.010, shall be guilty of a gross misdemeanor. [1921 c 181 § 2; RRS § 2321-2.]

67.04.030 Elements of offense outlined. To complete the offenses mentioned in RCW 67.04.010 and 67.04.020, it shall not be necessary that the baseball player, manager, umpire or official, shall, at the time, have been actually employed, selected or appointed to perform their respective duties; it shall be sufficient if the bribe be offered, accepted or agreed to with the view of probable employment, selection or appointment of the person to whom the bribe is offered, or by whom it is accepted. Neither shall it be necessary that such baseball player,

umpire or manager actually play or participate in a game or games concerning which said bribe is offered or accepted; it shall be sufficient if the bribe be given, offered or accepted in view of his or their possibly participating therein. [1921 c 181 § 3; RRS § 2321-3.]

67.04.040 "Bribe" defined. By a "bribe" as used in RCW 67.04.010 through 67.04.080, is meant any gift, emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing, directly or indirectly, any baseball player, manager, umpire, club or league official, to see which game an admission fee may be charged, or in which game of baseball any player, manager or umpire is paid any compensation for his services. Said bribe as defined in RCW 67.04.010 through 67.04.080 need not be direct; it may be such as is hidden under the semblance of a sale, bet, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. [1921 c 181 § 4; RRS § 2321-4.]

67.04.050 Corrupt baseball playing—Penalty. Any baseball player, manager or club or league official who shall commit any wilful act of omission or commission in playing, or directing the playing, of a baseball game, with intent to cause the ball club, with which he is affiliated, to lose a baseball game; or any umpire officiating in a baseball game, or any club or league official who shall commit any wilful act connected with his official duties for the purpose and with the intent to cause a baseball club to win or lose a baseball game, which it would not otherwise have won or lost under the rules governing the playing of said game, shall be guilty of a gross misdemeanor. [1921 c 181 § 5; RRS § 2321-5.]

67.04.060 Venue of action. In all prosecutions under RCW 67.04.010 through 67.04.080 the venue may be laid in any county where the bribe herein referred to was given, offered or accepted, or in which the baseball game was played in relation to which the bribe was offered, given or accepted, or the acts referred to in RCW 67.04.050 committed. [1921 c 181 § 6; RRS § 2321-6.]

67.04.070 Bonus or extra compensation. Nothing in RCW 67.04.010 through 67.04.080 shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager or baseball player by any person to encourage such manager or player to a higher degree of skill, ability or diligence in the performance of his duties. [1921 c 181 § 7; RRS § 2321-7.]

67.04.080 Scope of provisions as to bribes. RCW 67.04.010 through 67.04.080 shall apply only to baseball league and club officials, umpires, managers and players who act in such capacity in games where the public is generally invited to attend and a general admission fee is charged. [1921 c 181 § 8; RRS § 2321-8.]

67.04.090 Baseball contracts with minors—Definitions. As used in RCW 67.04.090 through 67.04.150 the following terms shall have the following meanings:

(1) "Minor" shall mean any person under the age of eighteen years, and who has not graduated from high school: *Provided*, That should he become eighteen during his senior year he shall be a minor until the end of the school year;

(2) "Contract" shall mean any contract, agreement, bonus or gratuity arrangement, whether oral or written;

(3) "Organized professional baseball" shall mean and include all persons, firms, corporations, associations, or teams or clubs, or agents thereof, engaged in professional baseball, or in promoting the interest of professional baseball, or sponsoring or managing other persons, firms, corporations, associations, teams, or clubs who play baseball in any of the major or minor professional baseball leagues, or any such league hereafter organized;

(4) "Agent" shall, in addition to its generally accepted legal meaning, mean and include those persons commonly known as "baseball scouts";

(5) "Prosecuting attorney" shall mean the prosecuting attorney, or his regular deputy, of the county in which the minor's parent is domiciled;

(6) "Parent" shall mean parent, parents or guardian. [1951 c 78 § 2.]

Purpose—1951 c 78: "The welfare of the children of this state is of paramount interest to the people of the state. It is the purpose of this act to foster the education of minors and to protect their moral and physical well-being. Organized professional baseball has in numerous cases induced minors to enter into contracts and agreements which have been unfair and injurious to them." [1951 c 78 § 1.]

Severability—1951 c 78: "If any portion, section, or clause of this act, shall be declared or found invalid by any court of competent jurisdiction, such adjudication shall not affect the remainder of this act." [1951 c 78 § 9.]

The foregoing annotations apply to RCW 67.04.090–67.04.150.

67.04.100 Contract with minor void unless approved. Any contract between organized professional baseball and a minor shall be null and void and contrary to the public policy of the state, unless and until such contract be approved as hereinafter provided. [1951 c 78 § 3.]

67.04.110 Approval by prosecuting attorney. No contract within RCW 67.04.090 through 67.04.150 shall be null and void, nor shall any of the prohibitions or penalties provided in RCW 67.04.090 through 67.04.150 be applicable if such contract be first approved in writing by the prosecuting attorney. Such approval may be sought jointly, or at the request of either party seeking a contract. [1951 c 78 § 4.]

67.04.120 Basis of approval. The prosecuting attorney shall have the authority to examine all the parties to the proposed contract and any other interested person and shall approve such contract if the following facts and circumstances are found to exist:

(1) That the minor has not been signed, approached, or contacted, directly or indirectly, pertaining to a professional baseball contract except as herein permitted by approval of the prosecuting attorney;

(2) That the minor has been apprised of the fact that approval of the contract may deprive him of his amateur status;

(3) That the parent of the minor and the minor have consented to the contract;

(4) That the prosecuting attorney has concluded that the contract conforms to the provisions of RCW 67.04.090 through 67.04.150, and is a valid and binding contract;

(5) That the contract permits the minor to have at least five months available each year to continue his high school education. [1951 c 78 § 5.]

Employment permits: RCW 28A.27.090.

67.04.130 Effect of disapproval. Should the prosecuting attorney not approve the contract as above provided, then such contract shall be void, and the status of the minor shall remain as if no contract had been made, unless the prosecuting attorney's determination be the result of arbitrary or capricious action. [1951 c 78 § 6.]

67.04.140 Negotiations with minor prohibited. No representative of organized professional baseball nor agent, nor person purporting to be able to represent any institution in organized baseball, whether so authorized to represent such institution or not, shall initiate or participate in any negotiations which would induce an evasion of this law in any way, including the removal of any minor to another state, or violate the minor's high school athletic eligibility. [1951 c 78 § 7.]

67.04.150 Penalty for violation of provisions as to contracts with minors. Any person, firm, corporation, association, or agent thereof, who enters into a contract with a minor, or gives a bonus or any gratuity to any minor to secure the minor's promise to enter into a contract in violation of the provisions of RCW 67.04.090 through 67.04.150, or shall otherwise violate any provisions of RCW 67.04.090 through 67.04.150, shall be guilty of a gross misdemeanor. [1951 c 78 § 8.]

Chapter 67.08

BOXING AND WRESTLING

Sections	
67.08.001	State athletic commission—Creation— Terms—Vacancies.
67.08.003	Official bonds—Expenses.
67.08.005	Meetings—Officers—Quorum—Office.
67.08.007	Officers, employees, inspectors.
67.08.009	Records—Seal—Oaths—Compulsory process.
67.08.010	Licenses for boxing and wrestling matches— Telecasts—Revocation.
67.08.015	Duties of commission—Licensing—Exemption as to scholastic organizations—Examination of con- testants—Weight classifications—Compliance required.
67.08.030	Licensee's bond.
67.08.040	Issuance of license.
67.08.050	Statement and report of contest—Tax on gross receipts.
67.08.055	Simultaneous or closed circuit telecasts—Re- port—Tax on gross receipts.
67.08.060	Inspectors—Duties—Fee for attending con- tests—Travel expenses.
67.08.080	Rounds and bouts limited—Weight of gloves.
67.08.090	Physical examination of contestants.
67.08.100	Annual licenses to participants—Fees— Revocation.

- 67.08.110 Participation in purse—Conducting sham contests—Forfeiture of license.
 67.08.120 Participation in sham contest—Penalty against contestant.
 67.08.130 Failure to make reports—Additional tax—Notice—Penalty for delinquency.
 67.08.140 Penalty for conducting contests or exhibitions without license—Injunctions.
 67.08.150 General penalty.
 67.08.900 Severability—1933 c 184.

Revisor's note—Sunset Act application: The state athletic commission is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.169. RCW 67.08.001 through 67.08.900 are scheduled for future repeal under RCW 43.131.170.

67.08.001 State athletic commission—Creation—Terms—Vacancies. There is hereby created and established a state commission to be known and designated as the "state athletic commission" and in this chapter referred to as the commission. The commission shall be composed of three members who shall be appointed by the governor and shall be subject to removal at the pleasure of the governor. The members of the first commission to be appointed after June 7, 1933 shall be appointed for the terms beginning July 1, 1933, and expiring as follows: One commissioner for the term expiring January 31, 1934, one commissioner for the term expiring January 31, 1935, and one commissioner for the term expiring January 31, 1936. Each of the first commissioners appointed shall hold office until his successor is appointed and qualified. Upon the expiration of the terms of the three commissioners first appointed, each succeeding commissioner shall be appointed to hold office for a term of four years and until his successor shall have been appointed and qualified. In case of a vacancy, it shall be filled by the appointment by the governor for the unexpired portion of the term in which such vacancy occurs. [1933 c 184 § 1; RRS § 8276-1. Formerly RCW 43.48.010.]

Sunset Act application: See note following chapter digest.

67.08.003 Official bonds—Expenses. Before entering upon the duties of his office, each commissioner shall enter into a surety bond, executed by a surety company authorized to do business in this state, payable to the state, and approved by the attorney general, in the penal sum of two thousand dollars conditioned upon the faithful performance of his duties, which bond shall be filed with the secretary of state. Each member of the commission shall be reimbursed for the cost of his bond and receive forty dollars per day and travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while in the performance of his duties. [1977 c 9 § 1. Prior: 1975-'76 2nd ex.s. c 48 § 1; 1975-'76 2nd ex.s. c 34 § 153; 1959 c 305 § 1; 1933 c 184 § 2; RRS § 8276-2. Formerly RCW 43.48.020.]

Sunset Act application: See note following chapter digest.

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

67.08.005 Meetings—Officers—Quorum—Office. The first members of the commission shall meet

at such time and place, not more than thirty days after their appointment as shall be designated by the governor and shall organize by electing a chairman and an executive secretary and adopt rules and regulations for the conduct of their meetings. A majority of the members of the commission shall constitute a quorum for the transaction of business. A general office for the transaction of business of the commission shall be designated. The commission may hold meetings and conduct business at such places as they may deem necessary. [1933 c 184 § 3; RRS § 8276-3. Formerly RCW 43.48.030.]

Sunset Act application: See note following chapter digest.

67.08.007 Officers, employees, inspectors. The commission may employ and fix the compensation of such officers, employees, and inspectors as may be necessary to administer the provisions of this chapter as amended. [1959 c 305 § 2; 1933 c 184 § 4; RRS § 8276-4. Formerly RCW 43.48.040.]

Sunset Act application: See note following chapter digest.

67.08.009 Records—Seal—Oaths—Compulsory process. The commission shall keep full and correct minutes of its transactions and proceedings, which shall at all times be open to the public inspection. The commission shall adopt and procure a seal and all process or certificates issued by it shall be attested under such seal. Copies of the record of said commission shall be certified by the secretary and attested with the seal of said commission. Any member of the commission, or any employee thereof, officially designated by said commission shall have the power to administer oaths in all matters pertaining to or concerning the proceedings or the official duties of the commission. The commission shall have power to summon witnesses to appear and testify on any matter deemed material to the proper discharge of its duties, such summons shall be served in like manner as a subpoena issued out of the superior court and shall be served by the sheriff of the proper county, and such service returned by him to said commission, without compensation therefor. [1933 c 184 § 5; RRS § 8276-5. Formerly RCW 43.48.050.]

Sunset Act application: See note following chapter digest.

67.08.010 Licenses for boxing and wrestling matches—Telecasts—Revocation. The commission shall have power to issue and for cause to revoke a license to conduct boxing contests or sparring or wrestling matches or exhibitions including a simultaneous telecast of any live, current or spontaneous boxing, sparring or wrestling match or performance on a closed circuit telecast within this state, whether originating in this state or elsewhere, and for which a charge is made, as herein provided under such terms and conditions and at such times and places as the commission may determine. Such licenses shall entitle the holder thereof to conduct boxing contests and sparring and/or wrestling matches and exhibitions under such terms and conditions and at such times and places as the commission may determine. In case the commission shall refuse to grant a license to any applicant, or shall cancel any license, such applicant,

or the holder of such canceled license shall be entitled, upon application, to a hearing to be held not less than sixty days after the filing of such order at such place as the commission may designate: *Provided, however*, That if it has been found by a valid finding and such finding is fully set forth in such order, that the applicant or licensee has been guilty of disobeying any provision of this chapter, such hearing shall be denied. [1975-'76 2nd ex.s. c 48 § 2; 1933 c 184 § 7; RRS § 8276-7. Prior: 1909 c 249 § 304; 1890 p 109 § 1; 1886 p 82 § 1.]

Sunset Act application: See note following chapter digest.

67.08.015 Duties of commission—Licensing—Exemption as to scholastic organizations—Examination of contestants—Weight classifications—Compliance required. The commission shall have power and it shall be its duty to direct, supervise, and control all boxing contests or sparring and wrestling matches or exhibitions conducted within the state and no such boxing contest, sparring or wrestling match or exhibition shall be held or given within this state except in accordance with the provisions of this chapter. The commission may, in its discretion, issue and for cause revoke a license to conduct, hold or give boxing, sparring and/or wrestling contests, matches, and exhibitions where an admission fee is charged by any club, corporation, organization, association, or fraternal society: *Provided, however*, That all boxing contests, sparring or wrestling matches or exhibitions which:

(1) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(2) Are entirely amateur events promoted on a non-profit basis or for charitable purposes; shall not be subject to the provisions of this chapter: *Provided, further*, That every contestant in any boxing contest, sparring or wrestling match not conducted under the provisions of this chapter, prior to engaging in any such contest or match, shall be examined by a practicing physician at least once in each calendar year or, where such contest is conducted by a common school, college or university as further described in this section, once in each academic year in which instance such physician shall also designate the maximum and minimum weights at which such contestant shall be medically certified to participate: *Provided further*, That no contestant shall be permitted to participate in any such boxing contest, sparring or wrestling match or exhibition in any weight classification other than that or those for which he is certificated: *Provided further*, That the organizations exempted by this section from the provisions of this chapter shall be governed by RCW 67.08.080 as said section applies to boxing contests, sparring or wrestling matches or exhibitions conducted by organizations exempted by this section from the general provisions of this chapter. No boxing contest or sparring or wrestling match or exhibition shall be conducted within the state

except pursuant to a license issued in accordance with the provisions of this chapter and the rules and regulations of the commission except as hereinabove provided. [1977 c 9 § 2. Prior: 1975-'76 2nd ex.s. c 48 § 3; 1975 c 1 § 1; 1973 c 53 § 1; 1951 c 48 § 2.]

Sunset Act application: See note following chapter digest.

67.08.030 Licensee's bond. Every licensee receiving a license as herein provided for shall file a good and sufficient bond in the sum of one thousand dollars with the commission in cities of less than one hundred fifty thousand inhabitants and of two thousand five hundred dollars in cities of more than one hundred fifty thousand inhabitants condition [conditioned] for the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes provided for herein and the obedience [observance] of all rules and regulations of the commission, which bond shall be subject to the approval of the attorney general. [1933 c 184 § 9; RRS § 8276-9.]

Sunset Act application: See note following chapter digest.

67.08.040 Issuance of license. Upon the approval by the commission of any application for a license, as hereinabove provided, and the filing of the bond the commission shall forthwith issue such license. [1975-'76 2nd ex.s. c 48 § 4; 1933 c 184 § 10; RRS § 8276-10.]

Sunset Act application: See note following chapter digest.

67.08.050 Statement and report of contest—Tax on gross receipts. Any licensee as herein provided shall within three days prior to the holding of any boxing contest or sparring and/or wrestling match or exhibition file with the commission a statement setting forth the name of each contestant, his manager or managers and such other information as the commission may require, and shall, within seventy-two hours after the termination of any contest file with the commission a written report, duly verified as the commission may require showing the number of tickets sold for such contest, the price charged for such tickets and the gross proceeds thereof, and such other and further information as the commission may require. Such licensee shall pay to the commission at the time of filing the above report a tax equal to five percent of such gross receipts and said five percent of such gross receipts shall be immediately paid by the commission into the state athletic fund of the state of Washington which is hereby created. [1933 c 184 § 11; RRS § 8276-11. FORMER PART OF SECTION: 1939 c 54 § 1; RRS § 8276-11a, now footnoted below.]

Sunset Act application: See note following chapter digest.

Transfer of athletic fund moneys to general fund. "That all moneys in the state treasury to the credit of the state athletic fund on the first day of May, 1939, and all moneys thereafter paid into the state treasury for, or to the credit of, the state athletic fund, shall be and are hereby transferred to, and placed in, the general fund." [1939 c 54 § 1; RRS § 8276-11a. Formerly RCW 67.08.050, part.]

Appropriations payable from general fund. "That from and after the first day of April, 1939, all appropriations made by the twenty-sixth legislature from the state athletic fund shall be paid out of moneys in the general fund." [1939 c 54 § 2; RRS § 8276-11b.]

State athletic fund abolished. "That from and after the first day of May, 1939, the state athletic fund in the state treasury shall be and is hereby abolished." [1939 c 54 § 3; RRS § 8276-11c.]

Payment of warrants on state athletic fund. "That from and after the first day of May, 1939, all warrants drawn on the state athletic fund and not presented for payment, shall be paid from the general fund, and it shall be the duty of the State Treasurer, and he is hereby directed, to pay such warrants, when presented, from the general fund." [1939 c 54 § 4; RRS § 8276-11d.]

Emergency—Effective date—1939 c 54. "That this act is necessary for the immediate support of the state government and its existing public institutions and shall take effect April 1, 1939." [1939 c 54 § 6; no RRS.]

67.08.055 Simultaneous or closed circuit telecasts—Report—Tax on gross receipts. Every licensee who charges and receives an admission fee for exhibiting a simultaneous telecast of any live, current, or spontaneous boxing or sparring match, or wrestling exhibition or performance on a closed circuit telecast viewed within this state shall, within seventy-two hours after such event, furnish to the commission a verified written report on a form which is supplied by the commission showing the number of tickets issued or sold, and the gross receipts therefor without any deductions whatsoever. Such licensee shall also, at the same time, pay to the commission a tax equal to five percent of such gross receipts paid for admission to the showing of the contest, match or exhibition. In no event, however, shall the tax be less than twenty-five dollars. The tax shall apply uniformly at the same rate to all persons subject to the tax. Such receipts shall be immediately paid by the commission into the general fund of the state. [1975-'76 2nd ex.s. c 48 § 5.]

Sunset Act application: See note following chapter digest.

67.08.060 Inspectors—Duties—Fee for attending contests—Travel expenses. The commission may appoint official inspectors at least one of which, in the absence of a member of the commission, shall be present at any boxing contest or sparring and/or wrestling match or exhibition held under the provisions of this chapter. Such inspectors shall carry a card signed by the chairman of the commission evidencing their authority. It shall be their duty to see that all rules and regulations of the commission and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any contest, and such inspector is authorized to receive from the licensee conducting the contest the statement of receipts herein provided for and to immediately transmit such reports to the commission. Each inspector shall receive a fee from the licensee to be set by the athletic commission for each contest officially attended. Each inspector shall also receive from the state travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 154; 1959 c 305 § 4; 1933 c 184 § 12; RRS § 8276-12.]

Sunset Act application: See note following chapter digest.

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

67.08.080 Rounds and bouts limited—Weight of gloves. No boxing contest or sparring exhibition held in

this state whether under the provisions of this chapter or otherwise shall be for more than ten rounds and no one round of any such contest or exhibition shall be for a longer period than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state or regional championships the commission may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds, and in bouts involving national championships the commission may grant an extension of no more than five additional rounds to allow total bouts of fifteen rounds. No contestant in any boxing contest or sparring match or exhibition whether under this chapter or otherwise shall be permitted to wear gloves weighing less than six ounces. The length and duration for wrestling matches whether held under the provisions of this chapter or otherwise shall be regulated by order of the commission. The commission shall promulgate rules and regulations to assure clean and sportsmanlike conduct on the part of all contestants and officials, and the orderly and proper conduct of the contest in all respects, and to otherwise make rules and regulations consistent with this chapter, but such rules and regulations shall apply only to contests held under the provisions of this chapter. [1974 ex.s. c 45 § 1; 1959 c 305 § 5; 1933 c 184 § 14; RRS § 8276-14.]

Sunset Act application: See note following chapter digest.

67.08.090 Physical examination of contestants. Each contestant for boxing, sparring or wrestling shall be examined within eight hours prior to the contest by a competent physician appointed by the commission. The physician shall forthwith and before such contest report in writing and over his signature the physical condition of each and every contestant to the commissioner or inspector present at such contest. No contestant whose physical condition is not approved by the examining physician shall be permitted to participate in any contest. Blank forms of physicians' report shall be provided by the commission and all questions upon such blanks shall be answered in full. The examining physician shall be paid a fee designated by the commission by the licensee conducting such match or exhibition. No boxing contest or sparring or wrestling match or exhibition shall be held unless a licensed physician of the commission or his duly appointed representative, shall be present throughout the contest.

Any practicing physician and surgeon may be selected by the board as the examining physician. Such physician present at such contest shall have authority to stop any contest when in his opinion it would be dangerous to a contestant to continue, and in such event it shall be his duty to stop such contest. If he has acted as examining physician he shall receive no fee for being present at such contest. [1933 c 184 § 15; RRS § 8276-15.]

Sunset Act application: See note following chapter digest.

67.08.100 Annual licenses to participants—Fees—Revocation. The commission may grant annual licenses upon application in compliance with the rules and regulations prescribed by the commission, and the

payment of the fees, the amount of which is to be determined by the commission, prescribed to managers, referees, boxers, wrestlers, seconds and trainers: *Provided*, That the provisions of this section shall not apply to contestants or participants in strictly amateur contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the war department or any bona fide athletic club which is a member of the Pacific northwest association of the amateur athletic union of the United States, holding and promoting athletic contests or smokers and where all funds are used primarily for the benefit of their members. Any such license may be revoked by the commission for any cause which it shall deem sufficient. No person shall participate or serve in any of the above capacities unless licensed as herein provided. The referee for any contest shall be designated by the commission from among such licensed referees. [1959 c 305 § 6; 1933 c 184 § 16; RRS § 8276-16. FORMER PART OF SECTION: 1933 c 184 § 20, part; RRS § 8276-20, part, now codified in RCW 67.08.025.]

Sunset Act application: See note following chapter digest.

67.08.110 Participation in purse—Conducting sham contests—Forfeiture of license. Any person or any member of any group of persons or corporation promoting wrestling or boxing exhibitions or contests who shall participate directly or indirectly in the purse or fee of any manager of any boxers or wrestlers or any boxer or any wrestler and any licensee who shall conduct or participate in any sham or fake boxing contest or sparring or wrestling match or exhibition shall thereby forfeit its license and the commission shall declare such licensee [license] canceled and void and such licensee shall not thereafter be entitled to receive another such, or any license issued pursuant to the provisions of this chapter. [1933 c 184 § 17; RRS § 8276-17.]

Sunset Act application: See note following chapter digest.

67.08.120 Participation in sham contest—Penalty against contestant. Any contestant who shall participate in any sham or fake boxing contest or sparring or wrestling match or exhibition or violate any rule or regulation of the commission shall be penalized in the following manner: For the first offense he shall be restrained by order of the commission for a period of not less than three months from participating in any contest held under the provisions of this chapter, such suspension to take effect immediately after the occurrence of the offense; for any second offense such contestant shall be forever suspended from participation in any contest held under the provisions of this chapter. [1933 c 184 § 18; RRS § 8276-18.]

Sunset Act application: See note following chapter digest.

67.08.130 Failure to make reports—Additional tax—Notice—Penalty for delinquency. Whenever any licensee shall fail to make a report of any contest within the time prescribed by this chapter or when such report is unsatisfactory to the commission, the secretary shall examine the books and records of such licensee; he

may subpoena and examine under oath any officer of such licensee and such other person or persons as he may deem necessary to a determination of the total gross receipts from any contest and the amount of tax thereon. If, upon the completion of such examination it shall be determined that an additional tax is due, notice thereof shall be served upon the licensee, and if such licensee shall fail to pay such additional tax within twenty days after service of such notice such delinquent licensee shall forfeit its license and shall forever be disqualified from receiving any new license and in addition thereto such licensee and the members thereof shall be jointly and severally liable to this state in the penal sum of one thousand dollars to be collected by the attorney general by civil action in the name of the state in the manner provided by law. [1933 c 184 § 19; RRS § 8276-19.]

Sunset Act application: See note following chapter digest.

67.08.140 Penalty for conducting contests or exhibitions without license—Injunctions. Any person, club, corporation, organization, association, or fraternal society conducting within this state boxing, sparring, or wrestling contests or exhibitions without having first obtained a license therefor in the manner provided by this chapter shall be guilty of a misdemeanor excepting such contests excluded from the operation of this chapter by RCW 67.08.015. The attorney general, each prosecuting attorney, the athletic commission, or any citizen of any county where any person, club, corporation, organization, association, or fraternal society shall threaten to hold, or appears likely to hold athletic contests or exhibitions in violation of this chapter, may in accordance with the laws of this state governing injunctions, enjoin such person, club, corporation, organization, association, or fraternal society from holding such contest or exhibition. [1959 c 305 § 7; 1951 c 48 § 1; 1933 c 184 § 22; RRS § 8276-22.]

Sunset Act application: See note following chapter digest.

67.08.150 General penalty. Any person, firm or corporation violating any of the provisions of this chapter for which no penalty is herein provided shall be guilty of a misdemeanor. [1933 c 184 § 24; RRS § 8276-24.]

Sunset Act application: See note following chapter digest.

67.08.900 Severability—1933 c 184. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1933 c 184 § 25; RRS § 8276-25.]

Sunset Act application: See note following chapter digest.

Chapter 67.12

DANCING AND DANCE HALLS—BILLIARDS, POOL AND BOWLING

Sections
67.12.010
67.12.020

Definitions.
License required to hold dance or conduct dance hall.

67.12.030	License fees.
67.12.040	Restrictions on operation and location of dance halls.
67.12.050	Issuance of licenses—Posting.
67.12.060	Revocation—Transfer.
67.12.070	Penalties.
67.12.075	Marathon dances—"Person" defined.
67.12.080	Marathon dances—Prohibited.
67.12.090	Marathon dances—Certain contests excepted.
67.12.100	Marathon dances—Penalty—Continuing offense.
67.12.110	License required for rural pool halls, billiard halls, and bowling alleys.

Regulations of dance halls and other places of amusement by cities and towns, see under applicable class of city or town: Title 35 RCW, and RCW 35A.11.020.

Unlawful to admit minors into dance halls, pool rooms and certain other places of amusement: RCW 26.28.080.

67.12.010 Definitions. As used in RCW 67.12.010 through 67.12.070, the term "public dance" shall be construed to mean any dance or ball to which the public generally may gain admission with or without the payment of an admission fee. The term "dance hall" shall be construed to mean any room, hall, pavilion, boat, float, building or other structure kept for the purpose of conducting therein public dances or dancing. [1923 c 111 § 1; RRS § 8303-1.]

67.12.020 License required to hold dance or conduct dance hall. No person, copartnership or corporation shall hold any public dance or conduct or maintain any dance hall without the limits of incorporated cities or towns without having first procured from the board of county commissioners of the county in which it is proposed to conduct such dance or dance hall a license so to do. Licenses for dance halls shall be issued by the year or by the quarter, as requested by the applicant. A license for a single public dance shall entitle the holder thereof to conduct such dance only on the day and at the place specified in the license. No license to conduct a public dance or dance hall shall be granted unless the applicant therefor be of good moral character. No license shall be granted to any corporation, but if any dance hall be conducted by a corporation the license shall issue to the manager or other directing head thereof. [1923 c 111 § 2; RRS § 8303-2.]

67.12.030 License fees. The board of county commissioners of each county shall, by a general order, from time to time, fix the fees to be charged for licenses granted hereunder, such fees, however, not to be less than twenty-five dollars nor more than two hundred and fifty dollars for an annual dance hall license, nor less than ten dollars nor more than seventy-five dollars for a quarterly license, nor less than one dollar nor more than ten dollars for a license for a single dance. The county commissioners may issue a permit without charge for grange, patriotic, fraternal or community dances. [1923 c 111 § 3; RRS § 8303-3.]

67.12.040 Restrictions on operation and location of dance halls. No immoral, indecent, suggestive or obscene dance shall be given or carried on in any dance hall or at any dance licensed hereunder. All buildings, halls, rooms, pavilions or other places in which public dances are carried on, as well as all halls, corridors and rooms

leading thereto or connected therewith shall at all times while open to the public, be well lighted.

No public dance shall be conducted nor dance hall kept open between the hours of one o'clock a.m. and six o'clock a.m., unless a special permit is obtained from the board of county commissioners.

No person under the age of eighteen years shall be permitted to attend any public dance without the escort of his or her parent or guardian. Any person under the age of eighteen years who shall by affirmative misrepresentation of age obtain admission to or permission to remain in any public dance shall be guilty of a misdemeanor.

The board of county commissioners shall have authority to make all proper and necessary administrative rules and regulations for the purpose of carrying into effect the provision[s] of RCW 67.12.010 through 67.12.070 with respect to the conduct of public dances, and may in its discretion refuse to grant licenses for dance halls to be located at such places or to be conducted at such times as will in their judgment interfere with the comfort and happiness of the community in which such proposed dance hall is to be located.

All peace officers of the state of Washington shall have free access to public dances and dance halls for the purpose of inspection and to enforce compliance with the provisions of RCW 67.12.010 through 67.12.070. [1923 c 111 § 4; RRS § 8303-4.]

67.12.050 Issuance of licenses—Posting. Applications for licenses hereunder shall be filed with the clerk of the board of county commissioners and be accompanied with a receipt showing the payment to the county treasurer of a license fee. After determining to grant a license to the applicant, the board shall notify the county auditor, who shall issue the license to the applicant. All licenses granted hereunder shall be kept posted in a conspicuous place on the licensed premises. [1923 c 111 § 5; RRS § 8303-5.]

67.12.060 Revocation—Transfer. Any license granted hereunder to conduct a dance hall may be revoked by the board of county commissioners after a hearing held upon not less than ten days written notice to the licensee, and the action of said board in revoking any such license shall be final and conclusive. Every license accepting a license hereunder shall be deemed to have consented to the provision of this section with respect to the cancellation of licenses. No license granted hereunder shall be transferable except by a formal order of the board of county commissioners, nor shall any dance hall or public dance be conducted at any place other than that specified in the license therefor. [1923 c 111 § 6; RRS § 8303-6.]

67.12.070 Penalties. Any person violating any of the provisions of RCW 67.12.010 through 67.12.060 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding two hundred and fifty dollars or by imprisonment for a term not exceeding ninety days or by both

such fine and imprisonment. [1923 c 111 § 7; RRS § 8303–7.]

67.12.075 Marathon dances—"Person" defined. The word "person" as used in RCW 67.12.075 through 67.12.100 shall include any firm, copartnership, corporation, association, society, club or individual. [1937 c 103 § 1; RRS § 8303–11.]

Construction—1937 c 103: "Words used in this act in the singular shall include the plural, and words used in the neuter shall include the masculine and feminine." [1937 c 103 § 5.]

Severability—1937 c 103: "If any section, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act." [1937 c 103 § 6.]

The foregoing annotations apply to RCW 67.12.075–67.12.100.

67.12.080 Marathon dances—Prohibited. It shall be unlawful for any person, firm, corporation, or association of persons to conduct, carry on, manage or maintain, or to cause or permit to be conducted, carried on, managed or maintained, or for any person to participate in, or to cause or permit to be participated in, or to aid or assist in the conducting or maintenance of, any public so-called "marathon dance", "walkathon", "endurathon", "speedathon", or any public endurance dancing, walking, running, skipping, jumping, sliding, gliding, rolling or crawling contest or exhibition under any other designation or name, or any similar exhibition or contest of human endurance in dancing, walking, running, skipping, jumping, sliding, gliding, rolling or crawling within this state. [1937 c 103 § 2; RRS § 8303–12.]

67.12.090 Marathon dances—Certain contests excepted. Nothing contained in RCW 67.12.075 through 67.12.100 shall be construed to apply to amateur or professional athletic events or contests, or to high school, college, or intercollegiate athletic contests or sports, or to any events or contests licensed by the state or by any board, commission, or officer thereof. [1937 c 103 § 3; RRS § 8303–13.]

67.12.100 Marathon dances—Penalty—Continuing offense. Any person, firm, corporation, or association of persons violating any of the provisions of RCW 67.12.075 through 67.12.090 shall be deemed guilty of a misdemeanor. Each separate day or any portion thereof during which any violation of RCW 67.12.075 through 67.12.090 occurs or continues shall be deemed to constitute a separate offense. [1937 c 103 § 4; RRS § 8303–14.]

67.12.110 License required for rural pool halls, billiard halls, and bowling alleys. The board of county commissioners of each county in the state of Washington shall have sole and exclusive authority and power to regulate, restrain, license, or prohibit the maintenance or running of pool halls, billiard halls, and bowling alleys outside of the incorporated limits of each incorporated city, town, or village in their respective counties: *Provided*, That the annual license fee for maintenance or running such pool halls, billiard halls, and bowling alleys shall in no instance be less than twenty-five dollars nor

more than two hundred and fifty dollars; which said license fee shall be paid annually in advance to the county treasurer: *And provided further*, That nothing herein or elsewhere shall be so construed as to prevent the boards of county commissioners of the respective counties from revoking any license at any time prior to the expiration thereof for any cause by such board of county commissioners deemed proper. And if said county commissioners revoke said license they shall refund the unearned portion of such license. [1909 c 112 § 1; RRS § 8289.]

Licensing under 1873 act: Chapter 67.14 RCW.

Chapter 67.14

BILLIARD TABLES, BOWLING ALLEYS AND MISCELLANEOUS GAMES—1873 ACT

Sections	
67.14.010	Hawkers and auctioneers must procure license— Exceptions.
67.14.020	Sale or other disposition of liquor—County li- cense—Penalty.
67.14.030	Hawkers and auctioneers—Issuance of license.
67.14.040	Retail liquor license.
67.14.050	Wholesale liquor license—Billiard table, bowling alley licenses.
67.14.060	Liquor sales, keeping games, without license— Penalty.
67.14.070	Purchase of license—Bond.
67.14.080	Duration of license.
67.14.090	Issuance of license.
67.14.100	When contrivance deemed kept for hire.
67.14.110	Druggists excepted.
67.14.120	Disposition of fees, fines and forfeitures.

Reviser's note: The territorial act codified herein, though for the most part obsolete, has never been expressly repealed. "An Act relating to licenses", it empowers the county commissioners to license hawkers and auctioneers, persons dealing in intoxicating liquors, and persons conducting bowling alleys, billiard tables and other games. The auctioneer sections have been codified as RCW 36.71.070 and 36.71.080. As to the sections relating to intoxicating liquors, it seems clear that this field has been preempted by the state; see RCW 66.08.120. For a later enactment concerning the licensing of rural pool halls, billiard halls and bowling alleys, see RCW 67.12.110.

Alcoholic beverage control: Title 66 RCW.

67.14.010 Hawklers and auctioneers must procure license—Exceptions. See RCW 36.71.070.

67.14.020 Sale or other disposition of liquor—County license—Penalty. If any person shall sell or dispose of any spirituous, malt, or fermented liquors or wines, in any quantity less than one gallon, without first obtaining a license therefor as hereinafter provided, such person shall, for each and every such offense, be liable to a fine of not less than five nor more than fifty dollars, with costs of prosecution. [1873 p 437 § 2; Code 1881, Bagley's Supp. p 26 § 2.]

67.14.030 Hawklers and auctioneers—Issuance of license. See RCW 36.71.080.

67.14.040 Retail liquor license. The legislative authorities of each county, in their respective counties, shall have the power to grant license to persons to keep drinking houses or saloons therein, at which spirituous, malt, or fermented liquors and wines may be sold in less

quantities than one gallon; and such license shall be called a retail license upon the payment, by the person applying for such license, of the sum of three hundred dollars a year into the county treasury, and the execution of a good and sufficient bond, executed to such county in the sum of one thousand dollars, to be approved by such legislative authority or the county auditor of the county in which such license is granted, conditioned that he will keep such drinking saloon or house in a quiet, peaceable, and orderly manner: *Provided*, The foregoing shall not be so construed as to prevent the legislative authority of any county from granting licenses to drinking saloons or houses therein, when there is but little business doing, for less than three hundred dollars, but in no case for less than one hundred dollars per annum: *And provided further*, That such license shall be used only in the precinct to which it shall be granted; *Provided further*, that no license shall be used in more than one place at the same time. *And further provided*, That no license shall be granted to any person to retail spirituous liquors until he shall furnish to the legislative authority satisfactory proof that he is a person of good moral character. [1973 1st ex.s. c 154 § 100; 1875 p 124 § 1; 1873 p 438 § 4; Code 1881, Bagley's Supp. p 26 § 4.]

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

67.14.050 Wholesale liquor license—Billiard table, bowling alley licenses. Said county commissioners in their respective counties shall also have power to grant licenses to sell spirituous liquors and wines therein in greater quantities than one gallon, to be called a wholesale license upon payment of the sum of not to exceed one hundred dollars per annum into the county treasury by such person so desiring such license; also, upon payment of not to exceed a like sum into the county treasury by any person desiring a grocery license to sell lager beer to grant such person such license to sell for the period of one year. Also, upon the payment of such sum as the county commissioners may establish and fix, by order duly entered in the record of their proceedings, not exceeding twenty-five dollars per annum for each billiard table, pigeon-hole table, or bowling alley, grant a license to any person applying for the same and giving such bond not exceeding two hundred dollars, as such commissioners may require: *Provided*, No person shall be required to take out any license to sell any wine made from fruit produced by such person's own labor, in this territory. [1873 p 438 § 5; Code 1881, Bagley's Supp. p 27 § 5.]

License required for rural pool halls, billiard halls and bowling alleys: RCW 67.12.110.

67.14.060 Liquor sales, keeping games, without license—Penalty. Any person who shall sell spirituous liquors or wines in greater quantities than one gallon, or shall retail lager beer, or keep a billiard table or tables, or bowling alley or alleys for hire, in any county in this territory, without first taking out a license therefor, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty

dollars nor less than five dollars, and shall be committed to the county jail of the county where such offense may be committed, and be placed at hard labor until such fine and cost shall be paid or they may otherwise be discharged by due course of law. [1873 p 439 § 6; Code 1881, Bagley's Supp. p 27 § 6; RRS § 8290. Formerly RCW 67.12.120.]

67.14.070 Purchase of license—Bond. Any person desiring a license to do any business provided by this chapter that a license shall be taken out for doing, shall have the same granted by paying to the county treasurer of the county where he wishes to carry on such business the maximum sum that the county commissioners are by this chapter authorized to fix therefor, and executing such bond, to be approved by the county auditor, as is provided in this chapter, shall be given before license shall issue for carrying on such business. [1873 p 439 § 7; Code 1881, Bagley's Supp. p 27 § 7.]

67.14.080 Duration of license. The licenses authorized to be granted by this chapter shall at the option of the person applying for the same, be granted for six, nine, or twelve months, and the person holding such license may transact the business thereby authorized at any place in the county where such license is granted: *Provided*, That such business shall not be transacted in but one place in the county at a time. [1873 p 439 § 8; Code 1881, Bagley's Supp. p 27 § 8.]

67.14.090 Issuance of license. Upon presentation to the county auditor of any county of the certificate of the county treasurer that any person has paid into the county treasury the amount provided by this chapter, to be paid for the transaction of any business that a license may be granted to transact, and for the time provided in this chapter, and upon the execution and delivery to such auditor of the bond hereinbefore required, it shall be the duty of such county auditor to issue such license to such person so presenting such certificate, executing and delivering such bond and making application therefor, for the period of time that the money as shown by the treasurer's certificate would entitle the person so presenting the same to have a license issued for. [1873 p 439 § 9; Code 1881, Bagley's Supp. p 27 § 9.]

67.14.100 When contrivance deemed kept for hire. Any person who shall keep a billiard table or tables, pigeon-hole, Jenny Lind, and all other gaming tables, or bowling alley or bowling alleys in a drinking saloon or house or in a room or building adjoining or attached thereto, and shall allow the same to be used by two or more persons to determine by play thereon which of the persons so playing shall pay for drinks, cigars, or other articles for sale in such saloon or drinking house, shall, within the meaning of this chapter, be deemed to be keeping the same for hire. [1873 p 440 § 10; Code 1881, Bagley's Supp. p 28 § 10; RRS § 8291. Formerly RCW 67.12.130.]

67.14.110 Druggists excepted. None of the provisions of this chapter shall be held to apply to the sale by

apothecaries or druggists of spirituous, malt, or fermented liquors or wines for medicinal purposes, upon the prescription of a practicing physician. [1873 p 440 § 11; Code 1881, Bagley's Supp. p 28 § 11.]

67.14.120 Disposition of fees, fines and forfeitures. All fines and forfeitures collected under this chapter, and all moneys paid into the treasury of any county for licenses as aforesaid, shall be applied to school or county purposes as the local laws of such county may direct: *Provided*, That this chapter shall not affect or apply to any private or local laws upon the subject of license in any county in this territory except King county, and no license shall be construed to mean more than the house or saloon kept by the same party or parties: *Provided, further*, That no part of this chapter shall in any way apply to the county of Island: *And provided, further*, That all moneys for licenses within the corporate limits of the town of Olympia shall be paid directly into the town treasury of said town as a municipal fund for the use of said town: *And provided further*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 29; 1873 p 440 § 12; Code 1881, Bagley's Supp. p 28 § 12.]

Collection and disposition of fines and costs: Chapter 10.82 RCW.

Chapter 67.16 HORSE RACING

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67.16.010 Definitions. Unless the context otherwise requires, words and phrases as used herein shall mean:

"Commission" shall mean the Washington horse racing commission, hereinafter created.

"Person" shall mean and include individuals, firms, corporations and associations.

"Race meet" shall mean and include any exhibition of thoroughbred, quarter horse, and appaloosa horse racing, or standard bred harness horse racing, where the parimutuel system is used.

Singular shall include the plural, and the plural shall include the singular; and words importing one gender shall be regarded as including all other genders. [1969 c 22 § 1; 1949 c 236 § 1; 1933 c 55 § 1; Rem. Supp. 1949 § 8312-1.]

Reviser's note: Throughout chapter 67.16 RCW the words "this act" (1933 c 55) have been translated to read "this chapter".

67.16.012 Washington horse racing commission—Creation—Terms—Vacancies—Bonds—Oaths. There is hereby created the Washington horse racing commission, to consist of three commissioners, who shall be citizens, residents, and qualified electors of the state of Washington, and one of whom shall be a breeder of race horses and he shall be of at least one year's standing. The first members of said commission shall be appointed by the governor within thirty days after March 3, 1933, one for a term to expire on the Thursday following the second Monday in January of 1935, one for a term to expire on the Thursday following the second Monday in January of 1937, and one for a term to expire on the Thursday following the second Monday in January of 1939, upon which expiration of the term of any member, the governor shall appoint a successor for a term of six years. Each member shall hold office until his successor is appointed and qualified. Vacancies in the office of commissioner shall be filled by appointment to be made by the governor for the unexpired term. Any commissioner may be removed at any time at the pleasure of the governor: *Provided*, That any member or successor that is appointed or reappointed by the governor after August 11, 1969, shall be confirmed by the senate. Before entering upon the duties of his office, each commissioner shall enter into a surety company bond, to be approved by the governor and attorney general, payable to the state of Washington, in the penal sum of five thousand dollars, conditioned upon the

faithful performance of his duties and the correct accounting and payment of all sums received and coming within his control under this chapter, and in addition thereto each commissioner shall take and subscribe to an oath of office of the same form as that prescribed by law for elective state officers. [1973 1st ex.s. c 216 § 1; 1969 ex.s. c 233 § 1; 1933 c 55 § 2; RRS § 8312-2. Formerly RCW 43.50.010.]

Severability—1933 c 55: "In case any part or portion of this act shall be held unconstitutional, such holding shall not affect the validity of this act as a whole or any other part or portion of this act not adjudged unconstitutional. All acts in conflict herewith are hereby repealed." [1933 c 55 § 10.]

67.16.015 Washington horse racing commission—Organization—Secretary—Records—Annual reports. The commission shall organize by electing one of its members chairman, and shall appoint and employ a secretary, and such other clerical, office, and other help as is necessary in the performance of the duties imposed upon it by this chapter. The commission shall keep detailed records of all meetings and of the business transacted therein, and of all the collections and disbursements. The commission shall prepare and submit an annual report to the governor. All records of the commission shall be public records and as such, subject to public inspection. [1977 c 75 § 80; 1933 c 55 § 3; RRS § 8312-3. Formerly RCW 43.50.020.]

67.16.017 Washington horse racing commission—Compensation and travel expenses. Each member of the Washington horse racing commission shall receive forty dollars for each day actually spent in the performance of his duties and travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended in going to, attending and returning from meetings of the commission, and travel expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the commission, but in no event shall a commissioner be paid in any one fiscal year in excess of one hundred twenty days, except the chairman of the commission who may be paid for not more than one hundred fifty days. [1975-'76 2nd ex.s. c 34 § 155; 1969 ex.s. c 233 § 2.]

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

67.16.020 Commission to fix time, place, duration of race meets—Race meet license—Participant's license. It shall be the duty of the commission, as soon as it is possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern the race meets in this state. It shall determine and announce the place, time and duration of race meets for which license fees are exacted; and it shall be the duty of each person holding a license under the authority of this chapter, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with all rules and regulations promulgated and all orders issued by the commission. It shall be unlawful for any person to hold any race meet without having first obtained and having in force and effect a license issued by the commission as

in this chapter provided; and it shall be unlawful for any owner, trainer or jockey to participate in race meets in this state without first securing an annual license therefor from the state racing commission, the fee for which shall be one dollar. [1933 c 55 § 4; RRS § 8312-4. Formerly RCW 67.16.020 and 67.16.030.]

67.16.040 Commission to regulate and license meets—Inspection. The commission created by this chapter is hereby authorized, and it shall be its duty, to license, regulate and supervise all race meets held in this state under the terms of this chapter, and to cause the various race courses of the state to be visited and inspected at least once a year. [1933 c 55 § 5; RRS § 8312-5.]

67.16.050 Application for meet—Issuance of license—Fee—Cancellation. Every person making application for license to hold a race meet, under the provisions of this chapter shall file an application with the commission which shall set forth the time, the place, the number of days such meet will continue, and such other information as the commission may require. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue. No person who has been convicted of any crime involving moral turpitude shall be issued a license, nor shall any license be issued to any person who has violated the terms or provisions of this chapter, or any of the rules and regulations of the commission made pursuant thereto, or who has failed to pay to the commission any or all sums required under the provisions of this chapter. The license shall specify the number of days the race meet shall continue and the number of races per day, which shall be not less than six nor more than ten, and for which a fee shall be paid in advance of one hundred dollars for each day: *Provided*, That if unforeseen obstacles arise, which prevent the holding, or completion of any race meet, the license fee for the meet, or for a portion which cannot be held may be refunded the licensee, if the commission deems the reasons for failure to hold or complete the race meet sufficient. Any unexpired license held by any person who violates any of the provisions of this chapter, or any of the rules or regulations of the commission made pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this chapter, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three days' notice, in writing, shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation. [1973 1st ex.s. c 39 § 1; 1933 c 55 § 6; RRS § 8312-6.]

67.16.060 Prohibited practices—Parimutuel system permitted—Race meet as public nuisance. (1) It shall be unlawful:

(a) To conduct pool selling, bookmaking, or to circulate hand books; or

(b) To bet or wager on any horse race other than by the parimutuel method; or

(c) For any licensee to take more than the percentage provided in RCW 67.16.170; or

(d) For any licensee to compute breaks in the parimutuel system otherwise than at five cents.

(2) Any wilful violation of the terms of this chapter, or of any rule, regulation, or order of the commission shall constitute a gross misdemeanor and when such violation is by a person holding a license under this chapter, the commission may cancel the license held by the offender, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the commission by the offender; and the action of the commission in that respect shall be final.

(3) The commission shall have power to exclude from any and all race courses of the state of Washington any person whom the commission deems detrimental to the best interests of racing or any person who wilfully violates any of the provisions of this chapter or of any rule, regulation, or order issued by the commission.

(4) Every race meet held in this state contrary to the provisions of this chapter is hereby declared to be a public nuisance. [1979 c 31 § 1; 1933 c 55 § 7; RRS § 8312-7.]

Gambling: Chapters 9.46 and 9.47 RCW.

67.16.070 Races for local breeders. For the purpose of encouraging the breeding, within this state, of valuable thoroughbred, quarter and/or standard bred horses, at least one race of each day's meet shall consist exclusively of Washington bred horses. [1949 c 236 § 2; 1933 c 55 § 8; Rem. Supp. 1949 § 8312-8.]

67.16.080 Horses to be registered. A quarter horse to be eligible for a race meet herein shall be duly registered with the American Quarter Horse Association. An appaloosa horse to be eligible for a race meet herein shall be duly registered with the National Appaloosa Horse Club or any successor thereto. [1969 c 22 § 2; 1949 c 236 § 3; Rem. Supp. 1949 § 8312-13.]

67.16.090 Races limited to horses of same breed. In any race meet in which quarter horses, thoroughbred horses and appaloosa horses participate, only horses of the same breed shall be allowed to compete in any individual race. [1969 c 22 § 3; 1949 c 236 § 4; Rem. Supp. 1949 § 8312-14.]

67.16.100 Gross receipts and fees—Payment to commission—Disposition—"Fair fund" and "state trade fair fund" (as amended by 1979 c 31). In addition to the license fees required by this chapter, the licensee shall pay to the commission the percentages of the gross receipts of all parimutuel machines at each race meet in accordance with RCW 67.16.105, which sums shall be paid daily to the commission.

All sums paid to the commission, together with all sums collected for license fees under the provisions of this chapter, shall be disposed of by the commission as follows: Twenty percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state

in connection with the work of the commission. Of the remaining eighty percent, forty-seven percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the general fund, and three percent shall, on the next business day following the receipt thereof, be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "state trade fair fund" which shall be maintained as a separate and independent fund, and made available to the director of commerce and economic development for the sole purpose of assisting state trade fairs. The remaining thirty percent shall be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "fair fund," which shall be maintained as a separate and independent fund outside of the state treasury, and made available to the director of agriculture for the sole purpose of assisting fairs in the manner provided in Title 15 RCW. Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and be placed in the general fund. The commission may, with the approval of the office of program planning and fiscal management, retain any sum required for working capital. [1979 c 31 § 2; 1977 c 75 § 81; 1965 c 148 § 7; 1955 c 106 § 5; 1947 c 34 § 2; 1941 c 48 § 4; 1935 c 182 § 30; 1933 c 55 § 9; Rem. Supp. 1947 § 8312-9.]

67.16.100 Gross receipts and fees—Commission's percentage—Disposition—"Fair fund" and "state trade fair fund" (as amended by 1979 c 151). In addition to the license fees required by this chapter the licensee shall pay to the commission five percent of the gross receipts of all parimutuel machines at each race meet, which sums shall be paid daily to the commission.

All sums paid to the commission, together with all sums collected for license fees under the provisions of this chapter, shall be disposed of by the commission as follows: Twenty percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission. Of the remaining eighty percent, forty-seven percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the general fund, and three percent shall, on the next business day following the receipt thereof, be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "state trade fair fund" which shall be maintained as a separate and independent fund, and made available to the director of commerce and economic development for the sole purpose of assisting state trade fairs. The remaining thirty percent shall be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "fair fund," which shall be maintained as a separate and independent fund outside of the state treasury, and made available to the director of agriculture for the sole purpose of assisting fairs in the manner provided in Title 15 RCW. Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and be placed in the general fund. The commission may, with the approval of the office of financial management, retain any sum required for working capital. [1979 c 151 § 169; 1977 c 75 § 81; 1965 c 148 § 7; 1955 c 106 § 5; 1947 c 34 § 2; 1941 c 48 § 4; 1935 c 182 § 30; 1933 c 55 § 9; Rem. Supp. 1947 § 8312-9.]

Reviser's note: RCW 67.16.100 was amended twice during the 1979 regular session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same legislative session, see RCW 1.12.025.

State international trade fairs: RCW 43.31.790 through 43.31.860.

Transfer of surplus funds in state trade fair fund to general fund: RCW 43.31.831 through 43.31.834.

67.16.101 Legislative finding—Responsibilities of horse racing commission—Availability of interest on one percent of gross receipts to support small race courses. The legislature finds that:

(1) A primary responsibility of the horse racing commission is the encouragement of the training and development of the equine industry in the state of

Washington whether the result of this training and development results in legalized horse racing or in the recreational use of horses;

(2) The horse racing commission has a further major responsibility to assure that any facility used as a race course should be maintained and upgraded to insure the continued safety of both the public and the horse at any time the facility is used for the training or contesting of these animals;

(3) Small race courses within the state have difficulty in obtaining sufficient funds to provide the maintenance and upgrading necessary to assure this safety at these facilities, or to permit frequent use of these facilities by 4-H children or other horse owners involved in training; and

(4) The one percent of the parimutuel machine gross receipts used to pay a special purse to the licensed owners of Washington bred horses is available for the purpose of drawing interest, thereby obtaining sufficient funds to be disbursed to achieve the necessary support to these small race courses. [1977 ex.s. c 372 § 1.]

Severability—1977 ex.s. c 372: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 372 § 3.]

67.16.102 Additional one percent of gross receipts to be withheld—Payment to owners—Payment of interest on one percent and amount retained by commission under RCW 67.16.100. Notwithstanding any other provision of chapter 67.16 RCW to the contrary the licensee shall withhold and shall pay daily to the commission, in addition to the percentages authorized by RCW 67.16.100 and 67.16.130, as now or hereafter amended, and RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those horses finishing first, second, third and fourth Washington bred only at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race meet: *Provided*, That nothing in this section shall apply to race meets which are nonprofit in nature, or of ten days or less or which have an average daily handle of less than one hundred twenty thousand dollars: *Provided*, That the additional one percent of the gross receipts of all parimutuel machines at each race meet and the amount retained by the commission as specified in RCW 67.16.100 shall be deposited daily in a time deposit by the commission and the interest derived therefrom shall be distributed annually on an equal basis to those county legislative authorities that operate fairs, authorized by chapter 36.37 RCW, and race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less: *Provided*, That such county legislative authorities have approved and are operating a program of use for said race course for year-round equine training and quartering: *Provided, further*, That said distributed funds shall be used for the purpose of maintaining and

upgrading the respective racing courses and equine quartering areas of said nonprofit meets. The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses. [1979 c 31 § 3; 1977 ex.s. c 372 § 2; 1969 ex.s. c 233 § 3.]

Severability—1977 ex.s. c 372: See note following RCW 67.16.101.

67.16.105 Gross receipts—Commission's percentage. (1) For race meets which have gross receipts of all parimutuel machines averaging more than five hundred thousand dollars for each authorized day of racing, the licensee shall pay to the commission daily four and one-half percent of the gross receipts up to the first five hundred thousand daily of all parimutuel machines at each race meet. All receipts in excess of five hundred thousand dollars shall be paid daily at the rate of five percent.

(2) For race meets which have gross receipts of all parimutuel machines averaging five hundred thousand dollars or less for each authorized day of racing, the licensee shall pay to the commission daily four percent of the gross receipts of all parimutuel machines at each race meet. [1979 c 31 § 6.]

67.16.110 Broadcasting and motion picture rights reserved. All radio broadcasting rights, and motion picture rights in connection with meets licensed hereunder are reserved to the state and the commission shall lease or license same only to the highest bidder. The exercise of such rights shall at all times be under the supervision of the commission. All income therefrom shall be paid into the state treasury and credited to the old age pension fund. [1933 c 55 § 11; RRS § 8312-11.]

Reviser's note: The 1933 horse racing act (1933 c 55 § 9) created the old age pension fund in support of the pensions authorized by 1933 c 29 and required the deposit therein of a percentage of parimutuel receipts. 1935 c 182, relating to old age assistance, repealed the 1933 pension act (1933 c 29), abolished the old age pension fund, and amended 1933 c 55 § 9 to require the payment of such receipts into the general fund. 1933 c 55 § 9 (as subsequently amended) is codified as RCW 67.16.100.

67.16.130 Nonprofit race meets—Licensing authorized—Fees. (1) Notwithstanding any other provision of law or of chapter 67.16 RCW, the commission may license race meets which are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty thousand dollars or less, at a daily licensing fee of ten dollars and a payment to the commission of one percent of the gross receipts of all parimutuel pools during such race meet, and the sponsoring nonprofit association shall be exempt from any other fees as provided for in chapter 67.16 RCW or by rule or regulation of the commission: *Provided*, That the commission on or after January 1, 1971 may deny the application for a license to conduct a racing meet by a nonprofit association, if same shall be determined not to be a nonprofit association by the Washington state racing commission.

(2) Notwithstanding any other provision of law or of chapter 67.16 RCW the licensees of race meets which

are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty thousand dollars or less, shall be permitted to retain fourteen percent of the gross receipts of all parimutuel pools during such race meet.

(3) Notwithstanding any other provision of law or of chapter 67.16 RCW or any rule promulgated by the commission, no license for a race meet which is nonprofit in nature, of ten days or less, and which has an average daily handle of one hundred twenty thousand dollars or less, shall be denied for the reason that the applicant has not installed an electric parimutuel tote board.

(4) As a condition to the reduction in fees as provided for in subsection (1) hereof, all fees charged to horse owners, trainers, or jockeys, or any other fee charged for a permit incident to the running of such race meet shall be retained by the commission as reimbursement for its expenses incurred in connection with the particular race meet. [1979 c 31 § 4; 1969 ex.s. c 94 § 2.]

Effective date—1969 ex.s. c 94: "This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1969." [1969 ex.s. c 94 § 3.]

67.16.140 Employees of commission—Employment restriction. No employee of the horse racing commission shall serve as an employee of any track at which that individual will also serve as an employee of the commission. [1973 1st ex.s. c 216 § 3.]

67.16.150 Employees of commission—Commissioners—Financial interest restrictions. No employee nor any commissioner of the horse racing commission shall have any financial interest whatsoever, other than an ownership interest in a community venture, in any track at which said employee serves as an agent or employee of the commission or at any track with respect to a commissioner. [1973 1st ex.s. c 216 § 4.]

67.16.160 Rules and regulations implementing conflict of interest laws. No later than ninety days after July 16, 1973 the horse racing commission shall promulgate, pursuant to chapter 34.04 RCW, reasonable rules and regulations implementing to the extent applicable to the circumstances of the horse racing commission the conflict of interest laws of the state of Washington as set forth in chapters 42.18, 42.21 and 42.22 RCW. [1973 1st ex.s. c 216 § 5.]

67.16.170 Gross receipts—Retention of percentage by race meets. (1) Race meets which have gross receipts of all parimutuel machines averaging more than five hundred thousand dollars for each authorized day of racing may retain the following from the daily gross receipts of all parimutuel machines:

(a) From the first five hundred thousand dollars, the licensee may retain ten and one-half percent of such gross receipts; and

(b) From any amount above the first five hundred thousand dollars, the licensee may retain ten percent of such gross receipts.

(2) Race meets which have gross receipts of all parimutuel machines averaging five hundred thousand dollars or less for each authorized day of racing may retain eleven percent from such gross receipts of any parimutuel machine.

(3) Of the amounts retained in subsections (1) and (2) of this section, at least fifty percent of the increase above ten percent shall be utilized to support the general purse structure of the race meet; except that, all such increased revenue to the licensee to be utilized for purses will be in addition to and will not supplant the customary purse structure between race tracks and participating horsemen. The remaining increase above ten percent shall be utilized for maintenance of the running surface, parking areas, and training and barn facilities. Any portion of the remainder may be utilized to support the general purse structure of the race meet. [1979 c 31 § 5.]

67.16.180 Quarter horse and Appaloosa races—Disposition of gross receipts. (1) Race meets of twenty-five days or less, which run sixty percent quarter horses and/or Appaloosa races, may retain fourteen percent from the gross receipts of any parimutuel machine.

(2) For race meets of twenty-five days or less, which run sixty percent quarter horses and/or Appaloosa races, the licensee shall pay to the commission daily one percent of the gross receipts of all parimutuel machines at each race meet. Such one percent shall be paid daily. [1979 c 31 § 7.]

67.16.900 Severability—General repealer—1933 c 55. In case any part or portion of this chapter shall be held unconstitutional, such holding shall not affect the validity of this chapter as a whole or any other part or portion of this chapter not adjudged unconstitutional. All acts in conflict herewith are hereby repealed. [1933 c 55 § 10; RRS § 8312-10.]

Chapter 67.20

PARKS, BATHING BEACHES, PUBLIC CAMPS

Sections	
67.20.010	Authority to acquire and operate certain recreational facilities—Charges—Eminent domain.
67.20.015	Authority to establish and operate public camps—Charges.
67.20.020	Contracts for cooperation.
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County parks and recreational facilities: Chapter 36.68 RCW.

Eminent domain: Title 8 RCW.

Metropolitan park districts: Chapter 35.61 RCW.

Recreation districts act for counties: Chapter 36.69 RCW.

State parks and recreation commission: Chapter 43.51 RCW.

67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain.

Any city in this state acting through its city council, or its board of park commissioners when authorized by charter or ordinance, any separately organized park district acting through its board of park commissioners or other governing officers, any school district acting through its board of school directors, any county acting

through its board of county commissioners, and any town acting through its city council shall have power, acting independently or in conjunction with the United States, the state of Washington, any county, city, park district, school district or town or any number of such public organizations to acquire any land within this state for park, playground, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beach or public camp purposes and roads leading from said parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, or public camps to nearby highways by donation, purchase or condemnation, and to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, roads and public camps upon any such land, including the power to enact and enforce such police regulations not inconsistent with the constitution and laws of the state of Washington, as are deemed necessary for the government and control of the same. The power of eminent domain herein granted shall not extend to any land outside the territorial limits of the governmental unit or units exercising said power. [1949 c 97 § 1; 1921 c 107 § 1; Rem. Supp. 1949 § 9319. FORMER PART OF SECTION: 1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321 now codified as RCW 67.20.015.]

67.20.015 Authority to establish and operate public camps—Charges. Any city, town, county, separately organized park district, or school district shall have power to establish, care for, control, supervise, improve, operate and maintain a public camp, or camps anywhere within the state, and to that end may make, promulgate and enforce any reasonable rules and regulations in reference to such camps and make such charges for the use thereof as may be deemed expedient. [1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321. Formerly RCW 67.20.010, part.]

67.20.020 Contracts for cooperation. Any city, park district, school district, county or town shall have power to enter into any contract in writing with any organization or organizations referred to in this chapter for the purpose of conducting a recreation program or exercising any other power granted by this chapter. In the conduct of such recreation program property or facilities owned by any individual, group or organization, whether public or private, may be utilized by consent of the owner. [1949 c 97 § 2; 1921 c 107 § 2; Rem. Supp. 1949 § 9320.]

67.20.030 Scope of chapter. This chapter shall not be construed to repeal or limit any existing power of any city or park district, but to grant powers in addition thereto. [1949 c 97 § 4; 1921 c 107 § 4; Rem. Supp. 1949 § 9319 note.]

Chapter 67.24

FRAUD IN SPORTING CONTEST

Sections

- 67.24.010 Commission of, declared felony—1945 c 107.
67.24.020 Scope of 1945 c 107.

67.24.010 Commission of, declared felony—1945 c 107. Every person who shall give, offer, receive or promise, directly or indirectly, any compensation, gratuity or reward, or make any promise thereof, or who shall fraudulently commit any act by trick, device or bunco, or any means whatsoever with intent to influence or change the outcome of any sporting contest between men or between animals, shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than five years. [1945 c 107 § 1; 1941 c 181 § 1; Rem. Supp. 1945 § 2499–1.]

67.24.020 Scope of 1945 c 107. All of the acts and statutes in conflict herewith are hereby repealed except chapter 55, Laws of 1933 [chapters 43.50 and 67.16 RCW] and amendments thereto. [1945 c 107 § 2; Rem. Supp. 1945 § 2499–1 note.]

Chapter 67.28

PUBLIC STADIUM, CONVENTION, PERFORMING ARTS, AND VISUAL ARTS FACILITIES

Sections

- 67.28.080 Definitions.
67.28.090 Stadium commission created—Appointment and selection of members—Expenses and per diem.
67.28.100 Duties of commission—Report and recommendations of feasibility studies.
67.28.110 Authorization to engage professional help.
67.28.120 Authorization to acquire, maintain, operate, etc., public stadium, convention, performing arts, and/or visual arts facilities.
67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.
67.28.140 Declaration of public purpose—Right of eminent domain.
67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment.
67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.
67.28.170 Power to lease all or part of facilities—Disposition of proceeds.
67.28.180 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.
67.28.185 Prior resolutions or ordinances in conflict with RCW 67.28.180(2) declared invalid.
67.28.190 Special excise tax authorized—Payment of tax to municipality—Deduction from sales tax required to be paid to department of revenue.
67.28.200 Special excise tax authorized—Exemptions, rules and regulations may be established—Collection.
67.28.210 Special excise tax authorized—Proceeds credited to special fund—Limitation on use—Investment.
67.28.220 Powers additional and supplemental to other laws.
67.28.350 Real property beneath air space dedicated to public body for stadium facilities—Exemption from property taxes.
67.28.900 Severability—1965 c 15.
67.28.910 Severability—1967 c 236.
67.28.911 Severability—1973 2nd ex.s. c 34.
67.28.912 Severability—1975 1st ex.s. c 225.

Multipurpose community centers: Chapter 35.59 RCW.

Stadiums, coliseums, powers of counties to build and operate: RCW 36.68.090.

67.28.080 Definitions. "Municipality" as used in this chapter means any county, city or town of the state of Washington.

"Person" as used in this chapter means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual. [1967 c 236 § 1.]

Reviser's note: Throughout this chapter, "this act" has been changed to "this chapter". This act, 1967 c 236, is codified as this chapter and also RCW 82.02.020.

67.28.090 Stadium commission created—Appointment and selection of members—Expenses and per diem. There is created a stadium commission to consist of six members to be selected as follows:

The governor shall appoint a chairman and one other member of the commission.

Any class AA county, class A county, or first class county may within ninety days following June 8, 1967 submit to the governor a request that the commission conduct a study and investigation as provided in RCW 67.28.100 relative to the construction of a stadium within such county. Such request shall be supported by plans and other relevant information.

Within two weeks of the end of the ninety-day period, the governor and/or the two members of the commission appointed by him shall meet and consider any such requests, and shall accept that request which in their sole discretion appears to present the most feasible plan.

Thereupon, the board of county commissioners of the county whose request is accepted shall select two members from its body as members of the commission, and the mayor of the city having the largest population in such county shall appoint two members from such city's legislative body to the commission.

The commission shall meet at such time or times as may be designated either by the governor or by the chairman of the board, and shall serve without compensation. They shall receive, for time spent on the commission, per diem and mileage allowances in conformity with the amounts allowed for legislators under the provisions of RCW 44.04.120. [1967 c 236 § 2.]

67.28.100 Duties of commission—Report and recommendations of feasibility studies. The commission is charged with and shall have the duty of making a complete study and investigation into the acquisition of a site for public stadium facilities, including feasibility studies in connection therewith, and shall report its findings and recommendations to the governing body of the county whose request is accepted as provided in RCW 67.28.090. [1967 c 236 § 3.]

67.28.110 Authorization to engage professional help. The commission is authorized to engage professional help including, but not limited to, (1) research and motivational study analysts, (2) cost analysis accountants,

(3) professional engineers, architects and designers, professional urban planners, and such other staff as may be necessary to carry out its duties under this chapter. [1967 c 236 § 4.]

67.28.120 Authorization to acquire, maintain, operate, etc., public stadium, convention, performing arts, and/or visual arts facilities. Any municipality is authorized either individually or jointly with any other municipality, or person, or any combination thereof, to acquire by purchase, gift or grant, to lease as lessee, and to construct, install, add to, improve, replace, repair, maintain, operate and regulate the use of public stadium facilities, convention center facilities, performing arts center facilities, and/or visual art center facilities, whether located within or without such municipality, including but not limited to buildings, structures, concession and service facilities, roads, bridges, walks, ramps and other access facilities, terminal and parking facilities for private vehicles and public transportation vehicles and systems, together with all lands, properties, property rights, equipment, utilities, accessories and appurtenances necessary for such public stadium facilities, convention center facilities, performing arts center facilities, or visual arts center facilities, and to pay for any engineering, planning, financial, legal and professional services incident to the development and operation of such public facilities. [1979 1st ex.s. c 222 § 1; 1973 2nd ex.s. c 34 § 1; 1967 c 236 § 5.]

67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities. Any municipality, taxing district, or municipal corporation is authorized to convey or lease any lands, properties or facilities to any other municipality for the development by such other municipality of public stadium facilities, convention center facilities, performing arts center facilities, and/or visual art center facilities or to provide for the joint use of such lands, properties or facilities, or to participate in the financing of all or any part of the public facilities on such terms as may be fixed by agreement between the respective legislative bodies without submitting the matter to the voters of such municipalities, unless the provisions of general law applicable to the incurring of municipal indebtedness shall require such submission. [1979 1st ex.s. c 222 § 2; 1973 2nd ex.s. c 34 § 2; 1967 c 236 § 6.]

67.28.140 Declaration of public purpose—Right of eminent domain. The acts authorized herein are declared to be strictly for the public purposes of the municipalities authorized to perform same. Any municipality as defined in RCW 67.28.080 shall have the power to acquire by condemnation and purchase any lands and property rights, both within and without its boundaries, which are necessary to carry out the purposes of this chapter. Such right of eminent domain shall be exercised by the legislative body of each such municipality in the manner provided by applicable general law or under chapter 8.12 RCW. [1967 c 236 § 7.]

67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment. To carry out the purposes of this chapter any municipality shall have the power to issue general obligation bonds within the limitations now or hereafter prescribed by the laws of this state. Such general obligation bonds shall be authorized, executed, issued and made payable as other general obligation bonds of such municipality: *Provided*, That the governing body of such municipality may provide that such bonds mature in not to exceed forty years from the date of their issue, may provide that such bonds also be made payable from any special taxes provided for in RCW 67.28.180, and may provide that such bonds also be made payable from any otherwise unpledged revenue which may be derived from the ownership or operation of any properties or to establish a guaranty fund for revenue bonds issued solely for stadium facility capital purposes. [1967 c 236 § 8.]

67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions. To carry out the purposes of this chapter the legislative body of any municipality shall have the power to issue revenue bonds without submitting the matter to the voters of the municipality: *Provided*, That the legislative body shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the legislative body may obligate the municipality to pay all or part of amounts collected from the special taxes provided for in RCW 67.28.180, and/or to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, added to, repaired or replaced pursuant to this chapter, as the legislative body shall determine: *Provided, further*, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners and holders of such bonds shall have a lien and charge against the gross revenue pledged to such fund.

Such revenue bonds and the interest thereon issued against such fund or funds shall constitute a claim of the holders thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest, or may be bearer bonds; shall be in such denominations as the legislative body shall deem proper; shall be payable at such time or times and at such places as shall be determined by the legislative body; shall be executed in such manner and bear interest at such rate or rates as shall be determined by the legislative body.

Such revenue bonds shall be sold in such manner as the legislative body shall deem to be for the best interests of the municipality, either at public or private sale.

The legislative body may at the time of the issuance of such revenue bonds make such covenants with the

purchasers and holders of said bonds as it may deem necessary to secure and guaranty the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guaranty the payment of such principal and interest, to pledge and apply thereto part or all of any lawfully authorized special taxes provided for in RCW 67.28.180, to maintain rates, charges or rentals sufficient with other available moneys to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bondholders, to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the legislative body may deem necessary to accomplish the most advantageous sale of such bonds. The legislative body may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The legislative body may include in the principal amount of any such revenue bond issue an amount for engineering, architectural, planning, financial, legal, and other services and charges incident to the acquisition or construction of public stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities, an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any facilities to be financed from the proceeds of such issue plus six months. The legislative body may, if it deems it in the best interest of the municipality, provide in any contract for the construction or acquisition of any facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds.

If the municipality shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the holder of any such bond may bring action against the municipality and compel the performance of any or all of such covenants. [1979 1st ex.s. c 222 § 3; 1973 2nd ex.s. c 34 § 3; 1967 c 236 § 9.]

67.28.170 Power to lease all or part of facilities—Disposition of proceeds. The legislative body of any municipality owning or operating public stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities acquired or developed pursuant to this chapter shall have power to lease to any municipality or person, or to contract for the use or operation by any municipality or person, of all or any part of the facilities authorized by this chapter, including but not limited to parking facilities, concession facilities of all kinds and any property or property rights appurtenant to such stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities, for such period and under such terms and conditions and upon such rentals, fees and charges as such legislative body may determine, and may pledge all or any portion of such rentals, fees and

charges and all other revenue derived from the ownership and/or operation of such facilities to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for authorized public stadium, convention center, performing arts center, and/or visual arts center facilities purposes. [1979 1st ex.s. c 222 § 4; 1973 2nd ex.s. c 34 § 4; 1967 c 236 § 10.]

67.28.180 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies. (1) Subject to the conditions set forth in subsection (2) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property: *Provided*, That it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this chapter shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this chapter upon the same taxable event;

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of subsection (a), so long as, and to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued pursuant to the provisions of RCW 67.28.150 through 67.28.160. No city within such county may levy the tax authorized by this section so long as said county is so exempt: *Provided*, That in the event that any city in such county has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as and to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued pursuant to the provisions of RCW 67.28.150 through 67.28.160. [1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

67.28.185 Prior resolutions or ordinances in conflict with RCW 67.28.180(2) declared invalid. Any resolution or ordinance, enacted prior to June 26, 1975, shall be deemed to be invalid from and after June 26, 1975 to

the extent said resolution or ordinance is in conflict with subsection (2) of RCW 67.28.180, as now or hereafter amended. [1975 1st ex.s. c 225 § 2.]

67.28.190 Special excise tax authorized—Payment of tax to municipality—Deduction from sales tax required to be paid to department of revenue. Any seller, as defined in RCW 82.08.010, who is required to collect any tax under RCW 67.28.180 for any municipality shall pay over such tax to such municipality as provided in RCW 67.28.200 and such tax shall be deducted from the amount of tax such seller would otherwise be required to collect and to pay over to the department of revenue under chapter 82.08 RCW. [1967 c 236 § 12.]

67.28.200 Special excise tax authorized—Exemptions, rules and regulations may be established—Collection. The legislative body of any county or city may establish reasonable exemptions and may adopt such reasonable rules and regulations as may be necessary for the levy and collection of the taxes authorized by RCW 67.28.180. The department of revenue shall perform the collection of such taxes on behalf of such county or city at no cost to such county or city. [1970 ex.s. c 89 § 2; 1967 c 236 § 13.]

67.28.210 Special excise tax authorized—Proceeds credited to special fund—Limitation on use—Investment. All taxes levied and collected under RCW 67.28.180 shall be credited to a special fund in the treasury of the county or city imposing such tax. Such taxes shall be levied only for the purpose of paying all or any part of the cost of acquisition, construction, or operating of stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purpose or purposes under this chapter, or to pay for advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion when a county or city has imposed such tax for such purpose, or as one of the purposes hereunder, and until withdrawn for use, the moneys accumulated in such fund or funds may be invested in interest bearing securities by the county or city treasurer in any manner authorized by law. [1979 1st ex.s. c 222 § 5; 1973 2nd ex.s. c 34 § 6; 1970 ex.s. c 89 § 3; 1967 c 236 § 14.]

67.28.220 Powers additional and supplemental to other laws. The powers and authority conferred upon municipalities under the provisions of this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1967 c 236 § 15.]

67.28.350 Real property beneath air space dedicated to public body for stadium facilities—Exemption from property taxes. See RCW 84.36.270–84.36.290.

67.28.900 Severability—1965 c 15. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 15 § 8.]

67.28.910 Severability—1967 c 236. If any provision of this act, or its application to any municipality, person or circumstance is held invalid, the remainder of this act or the application of the provision to other municipalities, persons or circumstances is not affected. [1967 c 236 § 19.]

67.28.911 Severability—1973 2nd ex.s. c 34. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 34 § 7.]

67.28.912 Severability—1975 1st ex.s. c 225. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 225 § 3.]

Chapter 67.30

MULTIPURPOSE SPORTS STADIA

Sections

67.30.010	Declaration of public purpose and necessity.
67.30.020	Participation by cities and counties—Powers— Costs, how paid.
67.30.030	Issuance of revenue bonds—Limitations— Retirement.
67.30.040	Power to appropriate and raise moneys.
67.30.050	Powers additional and supplemental to other laws.
67.30.900	Severability—1967 c 166.

Multipurpose community centers: Chapter 35.59 RCW.

Stadia, coliseums, powers of counties to build and operate: RCW 36.68.090.

67.30.010 Declaration of public purpose and necessity. The participation of counties and cities in multipurpose sports stadia which may be used for football, baseball, soccer, conventions, home shows or any and all similar activities; the purchase, lease, condemnation, or other acquisition of necessary real property therefor; the acquisition by condemnation or otherwise, lease, construction, improvement, maintenance, and equipping of buildings or other structures upon such real property or other real property; the operation and maintenance necessary for such participation, and the exercise of any other powers herein granted to counties and cities, are hereby declared to be public, governmental, and municipal functions, exercised for a public purpose, and matters of public necessity, and such real property and other property acquired, constructed, improved, maintained, equipped, and used by counties and cities in the manner and for the purposes enumerated in this chapter shall

and are hereby declared to be acquired, constructed, improved, maintained, equipped and used for public, governmental, and municipal purposes and as a matter of public necessity. [1967 c 166 § 2.]

67.30.020 Participation by cities and counties—Powers—Costs, how paid. The counties and cities are authorized, upon passage of an ordinance in the prescribed manner, to participate in the financing, construction, acquisition, operation, and maintenance of multipurpose sports stadia within their boundaries. Counties and cities are also authorized, through their governing authorities, to purchase, lease, condemn, or otherwise acquire property, real or personal; to construct, improve, maintain and equip buildings or other structures; and expend moneys for investigations, planning, operations, and maintenance necessary for such participation.

The cost of any such acquisition, condemnation, construction, improvement, maintenance, equipping, investigations, planning, operation, or maintenance necessary for such participation may be paid for by appropriation of moneys available therefor, gifts, or wholly or partly from the proceeds of revenue bonds as the governing authority may determine. [1967 c 166 § 3.]

67.30.030 Issuance of revenue bonds—Limitations—Retirement. Any revenue bonds to be issued by any county or city pursuant to the provisions of this chapter, shall be authorized and issued in the manner prescribed by the laws of this state for the issuance and authorization of bonds thereof for public purposes generally: *Provided*, That the bonds shall not be issued for a period beyond the life of the improvement to be acquired by the use of the bonds.

The bonding authority authorized for the purposes of this chapter shall be limited to the issuance of revenue bonds payable from a special fund or funds created solely from revenues derived from the facility. The owners and holders of such bonds shall have a lien and charge against the gross revenue of the facility. Such revenue bonds and the interest thereon against such fund or funds shall be a valid claim of the holders thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality. The governing authority of any county or city may by ordinance take such action as may be necessary and incidental to the issuance of such bonds and the retirement thereof. The provisions of chapter 36.67 RCW not inconsistent with this chapter shall apply to the issuance and retirement of any such revenue bonds. [1967 c 166 § 4.]

67.30.040 Power to appropriate and raise moneys. The governing body having power to appropriate moneys within any county or city for the purpose of purchasing, condemning, leasing or otherwise acquiring property, constructing, improving, maintaining, and equipping buildings or other structures, and the investigations, planning, operation or maintenance necessary to participation in any such all-purpose or multipurpose sports stadium, is hereby authorized to appropriate and cause

to be raised by taxation or otherwise moneys sufficient to carry out such purpose. [1967 c 166 § 5.]

67.30.050 Powers additional and supplemental to other laws. The powers and authority conferred upon counties and cities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other such powers or authority. [1967 c 166 § 6.]

67.30.900 Severability—1967 c 166. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 166 § 7.]

Chapter 67.32

WASHINGTON STATE RECREATION TRAILS SYSTEM

Sections

67.32.010	Short title.
67.32.020	Definitions.
67.32.030	Purpose.
67.32.040	Trails to be designated by IAC—Inclusion of other trails—Procedure.
67.32.050	State trails plan.
67.32.060	Proposals for designation of existing or proposed trails as state recreational trails.
67.32.070	Coordination by IAC.
67.32.080	Categories of trails or areas—Policy statement as to certain state lands.
67.32.090	General types of use.
67.32.100	Guidelines.
67.32.110	Consultation and cooperation with state, federal and local agencies.
67.32.120	Reports to governor and legislature.
67.32.130	Participation by volunteer organizations—Liability of public agencies therefor limited.
67.32.140	State highways department participation.

Disposition of off-road vehicle registration fees: RCW 46.09.110.

Severance or destruction of trails by highway construction, alternative or reconstruction: RCW 47.30.010.

Trails or paths along highways: RCW 47.30.020.

67.32.010 Short title. This chapter may be cited as the Washington State Recreation Trails System Act. [1970 ex.s. c 76 § 1.]

Sunset Act application: See note following RCW 43.99.110.

67.32.020 Definitions. As used in this chapter, "IAC" means the Washington state interagency committee for outdoor recreation, and "system" means the Washington state recreation trails system. [1970 ex.s. c 76 § 2.]

Sunset Act application: See note following RCW 43.99.110.

67.32.030 Purpose. (1) In order to provide for the ever increasing outdoor recreation needs of an expanding resident and tourist population and to promote public access to, travel within, and the enjoyment and appreciation of outdoor areas of Washington, it is declared to be in the public interest to plan a system of trails

throughout the state to enable and encourage the public to engage in outdoor recreation activities.

(2) The purpose of this chapter is to provide the means for attaining these objectives by instituting a method for establishing a system of state recreation trails, and by prescribing the manner by which a proposed trail may be included in the system. [1970 ex.s. c 76 § 3.]

Sunset Act application: See note following RCW 43.99.110.

67.32.040 Trails to be designated by IAC—Inclusion of other trails—Procedure. (1) The system shall be composed of trails as designated by the IAC. Such trails shall meet the conditions established in this chapter and such supplementary criteria as the IAC may prescribe.

(2) The IAC shall establish a procedure whereby federal, state, and local governmental agencies and/or public and private organizations may propose trails for inclusion within the system. Such proposals will comply with the proposal requirements contained in RCW 67.32.060.

(3) In consultation with appropriate federal, state, and local governmental agencies and public and private organizations, the IAC shall establish a procedure for public review of the proposals considered appropriate for inclusion in the state-wide trails system. [1970 ex.s. c 76 § 4.]

Sunset Act application: See note following RCW 43.99.110.

67.32.050 State trails plan. The IAC shall prepare a state trails plan as part of the state-wide outdoor recreation and open space plan. Included in this plan shall be an inventory of existing trails and potential trail routes on all lands within the state presently being used or with potential for use by all types of trail users. Such trails plan may include general routes or corridors within which specific trails or segments thereof may be considered for designation as state recreation trails. [1971 ex.s. c 47 § 1; 1970 ex.s. c 76 § 5.]

Sunset Act application: See note following RCW 43.99.110.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.060 Proposals for designation of existing or proposed trails as state recreational trails. Before any specific existing or proposed trail is considered for designation as a state recreational trail, a proposal must be submitted to the IAC showing the following:

(1) For existing trails:

(a) The route of such trail, including maps and illustrations, and the recommended mode or modes of travel to be permitted thereon;

(b) The characteristics that, in the judgment of the agency or organization proposing the trail, make it worthy of designation as a component of a state recreation trail or trail system;

(c) A map showing the current status of land ownership and use along the designated route;

(d) The name of the agency or combination of agencies that would be responsible for acquiring additional trail rights-of-way or easements, trail improvement, operation and maintenance, and a statement from those agencies indicating the conditions under which they would be willing to accept those responsibilities;

(e) Any anticipated problems of maintaining and supervising the use of such trail and any anticipated hazards to the use of any land or resource adjacent to such trail;

(f) And such others as deemed necessary by the IAC.

(2) In addition, for proposed trails or for existing trails which require additional right-of-way acquisition, easements, and/or development:

(a) The method of acquiring trail rights-of-way or easements;

(b) The estimated cost of acquisition of lands, or interest in land, if any is required;

(c) The plans for developing the trail and the estimated cost thereof;

(d) Proposed sources of funds to accomplish (2)(a) and (2)(b) of this section. [1970 ex.s. c 76 § 6.]

Sunset Act application: See note following RCW 43.99.110.

67.32.070 Coordination by IAC. Following designation of a state recreation trail, the IAC may coordinate:

(1) The agency or agencies that will acquire (where appropriate), develop and/or maintain the trail;

(2) The most appropriate location for the trail;

(3) Modes of travel to be permitted;

(4) And other functions as appropriate. [1970 ex.s. c 76 § 7.]

Sunset Act application: See note following RCW 43.99.110.

67.32.080 Categories of trails or areas—Policy statement as to certain state lands. The following seven categories of trails or areas are hereby established for purposes of this chapter:

(1) Cross-state trails which connect scenic, historical, geological, geographical, or other significant features which are characteristic of the state;

(2) Water-oriented trails which provide a designated path to, on, or along fresh and/or salt water in which the water is the primary point of interest;

(3) Scenic-access trails which give access to quality recreation, scenic, historic or cultural areas of state-wide or national significance;

(4) Urban trails which provide opportunities within an urban setting for walking, bicycling, horseback riding, or other compatible activities. Where appropriate, they will connect parks, scenic areas, historical points, and neighboring communities;

(5) Historical trails which identify and interpret routes which were significant in the historical settlement and development of the state;

(6) ORV vehicle trails which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. Such trails may be included as a part of the trail systems enumerated in subsections (1), (2), (3) and (5) of this section or may be separately designated;

(7) Off-road and off-trail areas which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. IAC shall coordinate an inventory and classification of such areas giving consideration to the type of use such areas will receive from persons operating four-wheel drive vehicles and two-wheel vehicles.

The planning and designation of trails shall take into account and give due regard to the interests of federal agencies, state agencies and bodies, counties, municipalities, private landowners and individuals, and interested recreation organizations. It is not required that the above categories be used to designate specific trails, but the IAC will assure that full consideration is given to including trails from all categories within the system. As it relates to all classes of trails and to all types of trail users, it is herein declared as state policy to increase recreational trail access to and within state and federally owned lands and private lands where access may be obtained. It is the intent of the legislature that public recreation facilities be developed as fully as possible to provide greater recreation opportunities for the citizens of the state. The purpose of *this 1972 amendatory act is to increase the availability of trails and areas for off-road vehicles by granting authority to state and local governments to maintain a system of ORV trails and areas, and to fund the program to provide for such development. State lands should be used as fully as possible for all public recreation which is compatible with the income-producing requirements of the various trusts. [1977 ex.s. c 220 § 21; 1972 ex.s. c 153 § 1; 1971 ex.s. c 47 § 2; 1970 ex.s. c 76 § 8.]

*Reviser's note: "this 1972 amendatory act" [1972 ex.s. c 153] consists of the 1972 ex.s. amendments to RCW 4.24.210, 46.09.010-46.09.120, 46.09.150-46.09.170, 46.09.190, 46.10.040, 46.10.070, 46.10.080, 46.10.110, 46.10.120 and 67.32.080, the enactment of RCW 46.09.220, 46.09.230, and 46.10.185, and the repeal of RCW 46.09.100.

Sunset Act application: See note following RCW 43.99.110.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.090 General types of use. All trails designated as state recreational trails will be constructed, maintained, and operated to provide for one or more of the following general types of use: Foot, foot powered bicycle, horse, motor vehicular or watercraft travel as appropriate to the terrain and location, or to legal, administrative or other necessary restraints. It is further provided that the same trail shall not be designated for use by foot and vehicular travel at the same time. [1970 ex.s. c 76 § 9.]

Sunset Act application: See note following RCW 43.99.110.

67.32.100 Guidelines. With the concurrence of any federal or state agency administering lands through which a state recreation trail may pass, and after consultation with local governments, private organizations and landowners which the IAC knows or believes to be concerned, the IAC may issue guidelines including, but not limited to: Encouraging the permissive use of volunteer organizations for planning, maintenance or trail

construction assistance; trail construction and maintenance standards, a trail use reporting procedure, and a uniform trail mapping system. [1971 ex.s. c 47 § 3; 1970 ex.s. c 76 § 10.]

Sunset Act application: See note following RCW 43.99.110.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.110 Consultation and cooperation with state, federal and local agencies. The IAC is authorized and encouraged to consult and to cooperate with any state, federal or local governmental agency or body, with private landowners, and with any privately owned utility having jurisdiction or control over or information concerning the use, abandonment or disposition of roadways, utility rights-of-way, or other properties suitable for the purpose of improving or expanding the system in order to assure, to the extent practicable, that any such properties having value for state recreation trail purposes may be made available for such use. [1970 ex.s. c 76 § 11.]

Sunset Act application: See note following RCW 43.99.110.

67.32.120 Reports to governor and legislature. From time to time, the IAC shall report to the governor and the legislature on the status of the state recreational trails system. [1970 ex.s. c 76 § 12.]

Sunset Act application: See note following RCW 43.99.110.

67.32.130 Participation by volunteer organizations—Liability of public agencies therefor limited. Volunteer organizations may assist public agencies, with the agency's approval, in the construction and maintenance of recreational trails in accordance with the guidelines issued by the interagency committee. In carrying out such volunteer activities the members of the organizations shall not be considered employees or agents of the public agency administering the trails, and such public agencies shall not be subject to any liability whatsoever arising out of volunteer activities. The liability of public agencies to members of such volunteer organizations shall be limited in the same manner as provided for in RCW 4.24.210. [1971 ex.s. c 47 § 4.]

Sunset Act application: See note following RCW 43.99.110.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.140 State highways department participation. The state highways department shall consider plans for trails along and across all new construction projects, improvement projects, and along or across any existing highways in the state system as deemed desirable by the IAC. [1971 ex.s. c 47 § 5.]

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

Sunset Act application: See note following RCW 43.99.110.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.



Title 68

CEMETERIES, MORGUES AND HUMAN REMAINS

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Chapter 68.04 DEFINITIONS

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- 68.04.020 "Human remains", "remains" defined.
- 68.04.030 "Cremated remains".
- 68.04.040 "Cemetery".
- 68.04.050 "Burial park".
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- 68.04.160 "Crypt".
- 68.04.165 "Vault", "lawn crypt", "liner".
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- 68.04.200 "Cemetery corporation", "cemetery association".
- 68.04.210 "Cemetery business", etc.
- 68.04.220 "Directors", "governing body".
- 68.04.230 "Lot", "plot", etc.
- 68.04.240 "Plot owner", "owner", "lot proprietor".

68.04.020 "Human remains", "remains" defined. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition except cremated remains. [1977 c 47 § 1; 1943 c 247 § 2; Rem. Supp. 1943 § 3778-2.]

Short title—1943 c 247: "This act shall be known as the 'General Cemetery Act.'" [1943 c 247 § 1.]

Severability—1943 c 247: "If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act." [1943 c 247 § 147.]

The foregoing annotations apply to 1943 c 247, the general cemetery act, codified herein as follows: RCW 68.04.010 through 68.04.240, 68.08.010 through 68.08.030, 68.08.120 through 68.08.220, 68.08.240, 68.20.010 through 68.20.100, 68.24.010 through 68.24.180, 68.28.010 through 68.28.070, 68.32.010 through 68.32.170, 68.36.010 through 68.36.100, 68.40.010 through 68.40.090, 68.44.010 through 68.44.170, and 68.48.040 through 68.48.090.

68.04.030 "Cremated remains". "Cremated remains" means a human body after cremation in a crematory. [1977 c 47 § 2; 1943 c 247 § 3; Rem. Supp. 1943 § 3778-3.]

68.04.040 "Cemetery". "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

- (1) A burial park, for earth interments.
- (2) A mausoleum, for crypt interments.
- (3) A columbarium, for permanent cinerary interments. [1979 c 21 § 1; 1943 c 247 § 4; Rem. Supp. § 3778-4.]

68.04.050 "Burial park". "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 5; Rem. Supp. 1943 § 3778-5.]

68.04.060 "Mausoleum". "Mausoleum" means a structure or building for the entombment of human remains in crypts in a place used, or intended to be used, and dedicated, for cemetery purposes. [1979 c 21 § 2; 1943 c 247 § 6; Rem. Supp. 1943 § 3778-6.]

68.04.070 "Crematory". "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains. [1943 c 247 § 7; Rem. Supp. 1943 § 3778-7.]

68.04.080 "Columbarium". "Columbarium" means a structure, room, or other space in a building or structure containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 8; Rem. Supp. 1943 § 3778-8.]

68.04.090 "Crematory and columbarium". "Crematory and columbarium" means a building or structure containing both a crematory and columbarium. [1943 c 247 § 9; Rem. Supp. 1943 § 3778-9.]

68.04.100 "Interment". "Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 10; Rem. Supp. 1943 § 3778-10.]

68.04.110 "Cremation". "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory in such a manner that the largest dimension of any remaining particle does not exceed five millimeters: *Provided*, That if a person entitled to possession of such remains under the provisions of RCW 68.08.245 is going to place the cremated remains in a cemetery, mausoleum, columbarium, or building devoted exclusively to religious purposes, the five millimeter dimension requirement shall not apply. [1977 c 47 § 3; 1943 c 247 § 11; Rem. Supp. 1943 § 3778-11.]

68.04.120 "Inurnment". "Inurnment" means placing cremated remains in an urn or vault and placing it in a niche. [1943 c 247 § 12; Rem. Supp. 1943 § 3778-12.]

68.04.130 "Entombment". "Entombment" means the placement of human remains in a crypt or vault. [1943 c 247 § 13; Rem. Supp. 1943 § 3778-13.]

68.04.140 "Burial". "Burial" means the placement of human remains in a grave. [1943 c 247 § 14; Rem. Supp. 1943 § 3778-14.]

68.04.150 "Grave". "Grave" means a space of ground in a burial park, used or intended to be used, for burial. [1943 c 247 § 15; Rem. Supp. 1943 § 3778-15.]

68.04.160 "Crypt". "Crypt" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains. [1979 c 21 § 3; 1943 c 247 § 16; Rem. Supp. 1943 § 3778-16.]

68.04.165 "Vault", "lawn crypt", "liner". "Vault", "lawn crypt" or "liner" means any container which is buried in the ground and into which human remains are placed in the burial process. [1979 c 21 § 4.]

68.04.170 "Niche". "Niche" means a space in a columbarium or urn garden used, or intended to be used,

for inurnment of cremated human remains. [1943 c 247 § 17; Rem. Supp. 1943 § 3778-17.]

68.04.180 "Temporary receiving vault". "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains. [1943 c 247 § 18; Rem. Supp. 1943 § 3778-18.]

68.04.190 "Cemetery authority". "Cemetery authority" includes cemetery corporation, association, corporation sole, or other person owning or controlling cemetery lands or property. [1943 c 247 § 19; Rem. Supp. 1943 § 3778-19.]

68.04.200 "Cemetery corporation", "cemetery association". "Cemetery corporation", "cemetery association", or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole. [1943 c 247 § 20; Rem. Supp. 1943 § 3778-20.]

68.04.210 "Cemetery business", etc. "Cemetery business", "cemetery businesses", and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property. [1943 c 247 § 21; Rem. Supp. 1943 § 3778-21.]

68.04.220 "Directors", "governing body". "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association. [1943 c 247 § 22; Rem. Supp. 1943 § 3778-22.]

68.04.230 "Lot", "plot", etc. "Lot", "plot", or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches. [1943 c 247 § 23; Rem. Supp. 1943 § 3778-23.]

68.04.240 "Plot owner", "owner", "lot proprietor". "Plot owner", "owner", or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority. [1943 c 247 § 24; Rem. Supp. 1943 § 3778-24.]

Chapter 68.05

CEMETERY BOARD

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68.05.020
68.05.030
68.05.040
68.05.050

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"Board" defined.

"Endowment care", "endowed care" defined.

Cemetery board created—Appointments—

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Qualifications of members.

68.05.060 Travel expenses.
 68.05.070 Officers—Administrative assistant—Employees.
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 68.05.240 Interment, certificate of authority required—Penalty.
 68.05.250 Revocation, suspension of certificate.
 68.05.255 Sale or transfer of cemetery authority—Application for new certificate of authority—Compliance required—Penalty.
 68.05.260 Unlawful to refuse burial to non—Caucasian.
 68.05.270 "Cemetery fund".
 68.05.280 Exemptions from chapter.
 68.05.290 Board members' immunity from suits.

Reviser's note—Sunset Act application: The cemetery board is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.187. RCW 68.05.010 through 68.05.280 are scheduled for future repeal under RCW 43.131.188.

68.05.010 Definitions. The definitions in chapter 68.04 RCW are applicable to this chapter and govern the meaning of terms used herein, except as otherwise provided expressly or by necessary implication. [1953 c 290 § 26.]

Sunset Act application: See note following chapter digest.

Short title—1953 c 290: "This act shall be known as 'The Cemetery Act.'" [1953 c 290 § 55.] This applies to RCW 68.05.010 through 68.05.280.

68.05.020 "Board" defined. The term "board" used in this chapter means the cemetery board. [1953 c 290 § 27.]

Sunset Act application: See note following chapter digest.

68.05.030 "Endowment care", "endowed care" defined. The terms "endowment care" or "endowed care" used in this chapter shall include both general and special care funds. [1953 c 290 § 28.]

Sunset Act application: See note following chapter digest.

68.05.040 Cemetery board created—Appointments—Terms. A cemetery board is created to consist of six members to be appointed by the governor. The first five members shall be appointed within thirty days after June 11, 1953. The terms of the five members first

appointed shall expire: One, January 15, 1954; one, January 15, 1955; one, January 15, 1956; and two, January 15, 1957. Thereafter appointments shall be for a four year term. The sixth member shall be appointed within thirty days of *the effective date of this 1977 amendatory act, and shall serve a four year term. [1977 ex.s. c 351 § 1; 1953 c 290 § 31.]

***Reviser's note:** "the effective date of this 1977 amendatory act" [1977 ex.s. c 351] was September 21, 1977.

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 351: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 351 § 7.]

68.05.050 Qualifications of members. Three members of the board shall be persons who have had experience in this state in the active administrative management of a cemetery authority or as a member of the board of directors thereof. Two members of the board shall be persons who have legal, accounting, or other professional experience which relates to the duties of the board. The sixth member of the board shall represent the general public and shall not have a financial interest in the cemetery business. [1979 c 21 § 5; 1977 ex.s. c 351 § 2; 1953 c 290 § 32.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.060 Travel expenses. Each member of the board shall receive no compensation for his services, but shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 156; 1953 c 290 § 33.]

Sunset Act application: See note following chapter digest.

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

68.05.070 Officers—Administrative assistant—Employees. The board shall elect annually a chairman and vice chairman and such other officers as it shall determine from among its members. Subject to the provisions of law the board may employ, fix the salaries of and prescribe the duties of, one administrative assistant and such clerical, technical and other employees as are necessary in the carrying out of its duties. [1953 c 290 § 34.]

Sunset Act application: See note following chapter digest.

68.05.080 Meetings. The board shall meet at least twice a year in order to conduct its business and may meet at such other times as it may designate. The board may meet at any place within this state. [1953 c 290 § 35.]

Sunset Act application: See note following chapter digest.

68.05.090 Administration and enforcement of title. The board shall enforce and administer the provisions of

chapters 68.04 through 68.46 RCW, subject to provisions of RCW 68.05.280 and shall have standing to seek enforcement of said provisions in the superior court of the state of Washington for the county in which the principal office of the cemetery authority is located. The board may refer such evidence as may be available concerning violations of chapters 68.04 through 68.46 RCW or of any rule or order promulgated by the board to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, in addition to any other action the board might commence, bring an action in the name of the board against any person to restrain and prevent the doing of any act or practice prohibited or declared unlawful in chapters 68.04 through 68.46 RCW. [1979 c 21 § 6; 1953 c 290 § 39.]

Sunset Act application: See note following chapter digest.

68.05.100 Rules and regulations. The board may establish necessary rules and regulations for the administration and enforcement of this title and the laws subject to its jurisdiction and prescribe the form of statements and reports provided for in this title: *Provided, however,* The board shall have no jurisdiction with regard to the provisions of chapter 68.48 RCW. [1953 c 290 § 36.]

Sunset Act application: See note following chapter digest.

68.05.110 Oaths—Examination. The board may administer oaths, and examine under oath, any person relative to the administration and enforcement of this title. [1953 c 290 § 37.]

Sunset Act application: See note following chapter digest.

68.05.120 Actions to enforce law—Attorney general. The board is authorized to bring actions to enforce the provisions of the law subject to its jurisdiction, in which actions it shall be represented by the attorney general. [1953 c 290 § 38.]

Sunset Act application: See note following chapter digest.

68.05.130 Examination of endowment funds and prearrangement trust funds—Expense. The board shall examine the endowment care and prearrangement trust fund or funds of a cemetery authority:

(1) Whenever it deems necessary, but at least once every three years after the original examination except where the cemetery authority is either required by the board to, or voluntarily files an annual financial report for the fund certified by a certified public accountant or a licensed public accountant in accordance with generally accepted auditing standards;

(2) Whenever the cemetery authority in charge of endowment care or prearrangement trust fund or funds fails after reasonable notice from the board to file the reports required by this chapter; or

(3) Whenever it is requested by verified petition signed by twenty-five lot owners alleging that the endowment care funds are not in compliance with this title, or whenever it is requested by verified petition signed by

twenty-five purchasers or beneficiaries of prearrangement merchandise or services alleging that the prearrangement trust funds are not in compliance with this title, in either of which cases, the examination shall be at the expense of the petitioners.

(4) The expense of the endowment care and prearrangement trust fund examination as provided in subdivisions (1) and (2) shall be paid by the cemetery authority. Such examination shall be privately conducted in the principal office of the cemetery authority. [1979 c 21 § 7; 1973 1st ex.s. c 68 § 12; 1953 c 290 § 42.]

Sunset Act application: See note following chapter digest.

68.05.140 Examination expense—Effect of refusal to pay—Disposition. If any cemetery authority refuses to pay any examination expenses in advance, the board shall refuse it a certificate of authority and shall revoke any existing certificate of authority. All examination expense moneys collected by the board shall be paid into the state treasury to the credit of the cemetery fund. [1973 1st ex.s. c 68 § 13; 1953 c 290 § 43.]

Sunset Act application: See note following chapter digest.

68.05.150 Powers, duties, concerning examination of funds. In making such examination the board:

(1) Shall have free access to the books and records relating to the endowment care funds, their collection and investment, and the number of graves, crypts, and niches under endowment care;

(2) Shall inspect and examine the endowment care funds to determine their condition and the existence of the investments;

(3) Shall ascertain if the cemetery authority has complied with all the laws applicable to endowment care funds;

(4) Shall have free access to all records required to be maintained pursuant to this chapter and to chapter 68.46 RCW with respect to prearrangement merchandise or services, unconstructed crypts or niches, or undeveloped graves; and

(5) Shall ascertain if the cemetery authority has complied with the laws applicable to prearrangement trust funds. [1979 c 21 § 8; 1973 1st ex.s. c 68 § 14; 1953 c 290 § 44.]

Sunset Act application: See note following chapter digest.

68.05.160 Action required when authority fails to deposit minimum endowment amount or comply with prearrangement contract provisions. If any examination made by the board, or any report filed with it, shows that there has not been collected and deposited in the endowment care funds the minimum amounts required by this title, or if the board finds that the cemetery authority has failed to comply with the requirements of this chapter and chapter 68.46 RCW with respect to prearrangement contracts, merchandise, or services, unconstructed crypts or niches or undeveloped graves, or prearrangement trust funds, the board shall require such cemetery authority to comply with this chapter or with chapter 68.40 or 68.46 RCW, as the case may be. [1979 c 21 § 9; 1973 1st ex.s. c 68 § 15; 1953 c 290 § 45.]

Sunset Act application: See note following chapter digest.

68.05.170 Order requiring reinvestment in compliance with title—Actions for preservation and protection. (1) Whenever the board finds, after notice and hearing, that any endowment care funds have been invested in violation of this title, it shall by written order mailed to the person or body in charge of the fund require the reinvestment of the funds in conformity with this title within the period specified by it which shall be not more than six months. Such period may be extended by the board in its discretion.

(2) The board may bring actions for the preservation and protection of endowment care funds in the superior court of the county in which the cemetery is located and the court shall appoint substitute trustees and make any other order which may be necessary for the preservation, protection and recovery of endowment care funds, whenever a cemetery authority or the trustees of its fund have:

(a) transferred or attempted to transfer any property to, or made any loan from, the endowment care funds for the benefit of the cemetery authority or any director, officer, agent or employee of the cemetery authority or trustee of any endowment care funds; or,

(b) failed to reinvest endowment care funds in accordance with a board order issued under subsection one of this section; or,

(c) invested endowment care funds in violation of this title; or,

(d) taken action or failed to take action to preserve and protect the endowment care funds, evidencing a lack of concern therefor; or,

(e) become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible; or,

(f) is in danger of becoming insolvent or has gone into bankruptcy or receivership; or,

(g) taken any action in violation of Title 68 RCW or failed to take action required by Title 68 RCW or has failed to comply with lawful rules, regulations and orders of the board.

(3) Whenever the board has reason to believe that endowment care funds are in danger of being lost or dissipated during the time required for notice and hearing, it may immediately apply to the superior court of the county in which the cemetery is located for any order which appears necessary for the preservation and protection of endowment care funds, including, but not limited to, immediate substitutions of trustees. [1969 ex.s. c 99 § 1; 1953 c 290 § 46.]

Sunset Act application: See note following chapter digest.

68.05.180 Annual report of authority—Contents—Verification. Each cemetery authority in charge of cemetery endowment care funds shall annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file with the board a written report in form and content prescribed by the board.

These reports shall be verified by the president or vice president, one other officer of the cemetery authority,

the accountant or auditor preparing the same, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. [1979 c 21 § 10; 1977 ex.s. c 351 § 3; 1973 1st ex.s. c 68 § 16; 1953 c 290 § 40.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.190 Examination of reports. The board shall examine the reports filed with it as to their compliance with the requirements of the law. [1953 c 290 § 41.]

Sunset Act application: See note following chapter digest.

68.05.200 Application for certificate of authority. Applications in writing for a certificate of authority shall be made by a cemetery authority to the board accompanied by the regulatory charge provided for in this title. Such application must show that the cemetery authority owns or is actively operating a cemetery which is subject to the provisions of this title. [1953 c 290 § 47.]

Sunset Act application: See note following chapter digest.

68.05.210 Proof of applicant's compliance with law, rules, etc., financial responsibility and reputation. The board may require such proof as it deems advisable concerning the compliance by such applicant to all the laws, rules, regulations, ordinances and orders applicable to it. The board shall also require proof that the applicant and its officers and directors are financially responsible, trustworthy and have good personal and business reputations, in order that only cemeteries of permanent benefit to the community in which they are located will be established in this state. [1969 ex.s. c 99 § 2; 1953 c 290 § 48.]

Sunset Act application: See note following chapter digest.

68.05.220 Certificates—Regulatory charges, when payable—Duration—Suspension, restoration—Transferability. The regulatory charges for cemetery certificates at all periods of the year are the same as provided in this chapter. All regulatory charges are payable at the time of the filing of the application and in advance of the issuance of the certificates. All certificates shall be issued for the year and shall expire at midnight, the thirtieth day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold. Cemetery certificates shall not be transferable. Failure to pay the regulatory charge fixed by the board prior to the first day of February for any year automatically shall suspend the certificate of authority. Such certificate may be restored upon payment to the board of the prescribed charges. [1969 ex.s. c 99 § 3; 1953 c 290 § 50.]

Sunset Act application: See note following chapter digest.

68.05.230 Regulatory charges—Rate. Every cemetery authority shall pay for each cemetery operated by it, an annual regulatory charge to be fixed by the board, based on the number of interments, entombments, and inurnments made during the preceding full calendar

year, but not exceeding one hundred dollars for one hundred or less, two hundred dollars for one hundred one to three hundred fifty, three hundred dollars for three hundred fifty-one to seven hundred, five hundred dollars for seven hundred one or more; plus an additional charge of not more than one dollar per interment, entombment, and inurnment made during the preceding full calendar year, which charges shall be deposited in the cemetery account. Upon payment of said charges and compliance with the provisions of Title 68 RCW and the lawful orders, rules, and regulations of the board, the board will issue a certificate of authority. [1977 ex.s. c 351 § 4; 1969 ex.s. c 99 § 4; 1953 c 290 § 51.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.240 Interment, certificate of authority required—Penalty. It shall be a misdemeanor for any cemetery authority to make any interment without a valid, subsisting, and unsuspended certificate of authority. Each interment shall be a separate violation. [1953 c 290 § 52.]

Sunset Act application: See note following chapter digest.

68.05.250 Revocation, suspension of certificate. Upon violation of any of the provisions of this title, the board may revoke or suspend the certificate of authority of any cemetery authority. [1953 c 290 § 49.]

Sunset Act application: See note following chapter digest.

68.05.255 Sale or transfer of cemetery authority—Application for new certificate of authority—Compliance required—Penalty. Prior to the sale or transfer of ownership or control of any cemetery authority, any person, corporation or other legal entity desiring to acquire such ownership or control shall apply in writing for a new certificate of authority to operate a cemetery and shall comply with all provisions of Title 68 RCW relating to applications for, and the basis for granting, an original certificate of authority. The board shall, in addition, enter any order deemed necessary for the protection of all endowment care funds and/or prearrangement trust fund during such transfer. As a condition of applying for a new certificate of authority, the entity desiring to acquire such ownership or control must agree to be bound by all then existing prearrangement contracts and the board shall enter that agreement as a condition of the transfer. Persons and business entities selling and persons and business entities purchasing ownership or control of a cemetery authority shall each file an endowment care fund report and/or a prearrangement trust fund report showing the status of such funds immediately before and immediately after such transfer on a written report form prescribed by the board. Failure to comply with this section shall be a gross misdemeanor and any sale or transfer in violation of this section shall be void. [1979 c 21 § 11; 1973 1st ex.s. c 68 § 17; 1969 ex.s. c 99 § 5.]

Sunset Act application: See note following chapter digest.

68.05.260 Unlawful to refuse burial to non-Caucasian. It shall be unlawful for any cemetery under this chapter to refuse burial to any person because such person may not be of the Caucasian race. [1953 c 290 § 53.]

Reviser's note: RCW 68.05.260 was declared unconstitutional in *Price v. Evergreen Cemetery Co. of Seattle* (1960) 157 Wash. Dec. 249.

Sunset Act application: See note following chapter digest.

68.05.270 "Cemetery fund". There shall be, in the office of the state treasurer, a fund to be known and designated as the "cemetery fund." All regulatory fees or other moneys to be paid under this chapter, unless provision be made otherwise, shall be paid at least once a month to the state treasurer to be credited to the cemetery fund. All moneys credited to the cemetery fund shall be used, when appropriated by the legislature, by the cemetery board to carry out the provisions of this chapter. [1953 c 290 § 29.]

Sunset Act application: See note following chapter digest.

Cemetery fund abolished and moneys transferred to cemetery account in state general fund: RCW 43.79.330 through 43.79.334.

68.05.280 Exemptions from chapter. The provisions of this chapter do not apply to any of the following:

(1) Nonprofit cemeteries which are owned or operated by any recognized religious denomination which qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built; or

(2) Any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1979 c 21 § 13; 1961 c 133 § 1; 1953 c 290 § 30.]

Sunset Act application: See note following chapter digest.

68.05.290 Board members' immunity from suits. Members of the board shall be immune from suit in any action, civil or criminal, based upon any official acts performed in good faith as members of such board, and the state shall defend, indemnify, and hold the members of the board harmless from all claims or suits arising in any manner from such acts. Expenses incurred by the state under this section shall be paid from the general fund. [1979 c 21 § 12.]

Chapter 68.08 HUMAN REMAINS

Sections

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68.08.010 Coroner's jurisdiction over remains. The jurisdiction of bodies of all deceased persons who come to their death suddenly when in apparent good health without medical attendance within the thirty-six hours preceding death; or where the circumstances of death indicate death was caused by unnatural or unlawful means; or where death occurs under suspicious circumstances; or where a coroner's autopsy or post mortem or coroner's inquest is to be held; or where death results from unknown or obscure causes, or where death occurs

within one year following an accident; or where the death is caused by any violence whatsoever, or where death results from a known or suspected abortion; whether self-induced or otherwise; where death apparently results from drowning, hanging, burns, electrocution, gunshot wounds, stabs or cuts, lightning, starvation, radiation, exposure, alcoholism, narcotics or other addictions, tetanus, strangulations, suffocation or smothering; or where death is due to premature birth or still birth; or where death is due to a violent contagious disease or suspected contagious disease which may be a public health hazard; or where death results from alleged rape, carnal knowledge or sodomy, where death occurs in a jail or prison; where a body is found dead or is not claimed by relatives or friends, is hereby vested in the county coroner, which bodies may be removed and placed in the morgue under such rules as are adopted by the coroner with the approval of the county commissioners, having jurisdiction, providing therein how the bodies shall be brought to and cared for at the morgue and held for the proper identification where necessary. [1963 c 178 § 1; 1953 c 188 § 1; 1917 c 90 § 3; RRS § 6042.]

68.08.020 Notice to coroner—Penalty. It shall be the duty of every person who knows of the existence and location of a dead body coming under the jurisdiction of the coroner as set forth in RCW 68.08.010, to notify the coroner thereof in the most expeditious manner possible, unless such person shall have good reason to believe that such notice has already been given. Any person knowing of the existence of such dead body and not having good reason to believe that the coroner has notice thereof and who shall fail to give notice to the coroner as aforesaid, shall be guilty of a misdemeanor. [1917 c 90 § 4; RRS § 6043.]

68.08.030 Free care and delivery of remains. No charge shall be made for the removal to or care of any body while in the morgue and upon the request of relatives or friends the body after investigation shall be delivered to the friends at any point in the city without charge. [1917 c 90 § 5; RRS § 6044.]

68.08.040 Deceased's effects to be listed. Duplicate lists of all jewelry, moneys, papers, and other personal property of the deceased shall be made immediately upon finding the same by the coroner or his assistants. The original of such lists shall be kept as a public record at the morgue and the duplicate thereof shall be forthwith duly certified to by the coroner and filed with the county auditor. [1917 c 90 § 6; RRS § 6045.]

68.08.050 Removal or concealment of body—Penalty. Any person, not authorized by the coroner or his deputies, who removes the body of a deceased person not claimed by a relative or friend, or who came to their death by reason of violence or from unnatural causes or where there shall exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, to any undertaking rooms or elsewhere, or any person who directs, aids or abets such taking, and any person who in any way conceals the

body of a deceased person for the purpose of taking the same to any undertaking rooms or elsewhere, shall in each of said cases be guilty of a gross misdemeanor and upon conviction thereof shall be punished by fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year or by both fine and imprisonment in the discretion of the court. [1917 c 90 § 7; RRS § 6046.]

68.08.060 Bodies for instruction purposes. Any physician or surgeon of this state, or any medical student under the authority of any such physician or surgeon, may obtain, as hereinafter provided, and have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction. [1891 c 123 § 1; RRS § 10026.]

68.08.070 Bodies, when may be used for dissection. Any sheriff, coroner, keeper or superintendent of a county poorhouse, public hospital, county jail, or state institution shall surrender the dead bodies of persons required to be buried at the public expense, to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being given to medical schools in this state, for their use in the instruction of medical students. If the deceased person during his last sickness requested to be buried, or if within thirty days after his death some person claiming to be a relative or a responsible officer of a church organization with which the deceased at the time of his death was affiliated requires the body to be buried, his body shall be buried. [1959 c 23 § 1; 1953 c 224 § 2; 1891 c 123 § 2; RRS § 10027.]

68.08.080 Certificate and bond before receiving bodies. Every physician or surgeon before receiving the dead body must give to the board or officer surrendering the same to him a certificate from the medical society of the county in which he resides, or if there is none, from the board of supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such purpose in this state only, and so as in no event to outrage the public feeling. [1891 c 123 § 3; RRS § 10028.]

68.08.090 Penalty. Any person violating any provision of RCW 68.08.060 through 68.08.080 shall upon conviction thereof be fined in any sum not exceeding five hundred dollars. [1891 c 123 § 4; RRS § 10029.]

68.08.100 Dissection, when permitted—Autopsy of person under the age of three years. The right to dissect a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he may authorize dissection; and cases where the spouse or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of

death, and then only to the extent so authorized: *Provided*, That the coroner, in his discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or post mortem in any case in which the coroner has jurisdiction of a body: *Provided, further*, That the coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death. Every person who shall make, cause, or procure to be made any dissection of a body, except as above provided, shall be guilty of a gross misdemeanor. [1963 c 178 § 2; 1953 c 188 § 2; 1909 c 249 § 237; RRS § 2489.]

68.08.101 Autopsy, post mortem—Who may authorize. Autopsy or post mortem may be performed in any case where authorization has been given by a member of one of the following classes of persons in the following order of priority:

- (1) The surviving spouse;
- (2) Any child of the decedent who is eighteen years of age or older;
- (3) One of the parents of the decedent;
- (4) Any adult brother or sister of the decedent;
- (5) A person who was guardian of the decedent at the time of death;
- (6) Any other person or agency authorized or under an obligation to dispose of the remains of the decedent. The chief official of any such agency shall designate one or more persons to execute authorizations pursuant to the provisions of this section.

If the person seeking authority to perform an autopsy or post mortem makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class, in the order of descending priority. However, no person under this section shall have the power to authorize an autopsy or post mortem if a person of higher priority under this section has refused such authorization: *Provided*, That this section shall not affect autopsies performed pursuant to RCW 68.08.010 or 68.08.103. [1977 c 79 § 1; 1953 c 188 § 11.]

68.08.102 Court petition for autopsy—Cost. Any party by showing just cause may petition the court to have autopsy made and results thereof made known to said party at his own expense. [1953 c 188 § 12.]

68.08.103 Autopsies in industrial deaths. In an industrial death where the cause of death is unknown, and where the department of labor and industries is concerned, said department in its discretion, may request the coroner in writing to perform an autopsy to determine the cause of death. The coroner shall be required to promptly perform such autopsy upon receipt of the written request from the department of labor and industries. [1953 c 188 § 6.]

68.08.104 Cost of autopsy. The cost of autopsy shall be borne by the county in which the autopsy is performed, except when requested by the department of labor and industries, in which case, the said department shall bear the cost of such autopsy; and except when performed on a body of an infant under the age of three years by the University of Washington medical school, in which case the medical school shall bear the cost of such autopsy. [1963 c 178 § 3; 1953 c 188 § 7.]

68.08.105 Autopsies, post mortems—Reports and records confidential—Exceptions. Reports and records of autopsies or post mortems shall be confidential, except to the attending physician, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or to the department of labor and industries in cases in which it has an interest under RCW 68.08.103.

The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, or any child, parent, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death. [1977 c 79 § 2; 1953 c 188 § 9.]

68.08.106 Autopsies, post mortems—Analyses—Opinions—Evidence—Costs. In any case in which an autopsy or post mortem is performed, the coroner or medical examiner, upon his own authority or upon the request of the prosecuting attorney or other law enforcement agency having jurisdiction, may make or cause to be made an analysis of the stomach contents, blood, or organs, or tissues of a deceased person and secure professional opinions thereon and retain or dispose of any specimens or organs of the deceased which in his discretion are desirable or needful for anatomic, bacteriological, chemical, or toxicological examination or upon lawful request are needed or desired for evidence to be presented in court. When the autopsy or post mortem requires examination in the region of the pituitary gland, that gland may be removed and utilized for any desirable or needful purpose: *Provided*, That a reasonable effort to obtain consent as required under RCW 68.08.510 shall be made if that organ is to be so utilized. Costs shall be borne by the county. [1975-'76 2nd ex.s. c 28 § 1; 1953 c 188 § 10.]

68.08.107 State toxicological laboratory established—State toxicologist—Washington State University police school. There shall be established at the University of Washington Medical School a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners and prosecuting attorneys. Annually the president of the University of Washington shall appoint a competent toxicologist as state toxicologist who shall serve a one year term. The state toxicologist may be reappointed to as many additional one year terms as the president of

the university in his discretion deems proper. The facilities of the police school of the Washington State University and the services of its professional staff shall be made available to the coroners and the prosecuting attorneys in their investigations under this chapter. This laboratory shall be deemed to be within the meaning of medical and biological research as defined in RCW 66.08.180, and funds for this purpose not to exceed one hundred fifty thousand dollars per biennium shall be provided for salaries and operations of said laboratory, and the funds so provided shall take priority over disbursements of any other sums from said medical and biological research fund. [1975-'76 2nd ex.s. c 84 § 1; 1970 ex.s. c 24 § 1; 1953 c 188 § 13.]

Liquor revolving fund distribution: "Of the sums derived from class H licenses or class H licensees which are to be distributed pursuant to RCW 66.08.180, eighty-five thousand dollars shall be provided for the operation of the state toxicological laboratory in the biennium ending June 30, 1971." [1970 ex.s. c 24 § 2.]

68.08.108 Autopsies, post mortems—Consent to embalm or cremate body—Time limitation. No dead body upon which the coroner, or prosecuting attorney, if there be no coroner in the county, may perform an autopsy or post mortem, shall be embalmed or cremated without the consent of the coroner having jurisdiction, and failure to obtain such consent shall be a misdemeanor: *Provided*, That such autopsy or post mortem must be performed within five days, unless the coroner shall obtain an order from the superior court extending such time. [1953 c 188 § 8.]

68.08.110 Burial or cremating. Except in cases of dissection provided for in RCW 68.08.100, and where a dead body shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, every dead body of a human being lying within this state, and the remains of any dissected body, after dissection, shall be decently buried, or cremated within a reasonable time after death. [1909 c 249 § 238; RRS § 2490.]

68.08.120 Holding body for debt—Penalty. Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, is guilty of a gross misdemeanor. [1943 c 247 § 27; Rem. Supp. 1943 § 3778-27.]

68.08.130 Unlawful disposal of remains. Every person who permanently deposits or disposes of any human remains, except as otherwise provided by law, in any place, except in a cemetery or a building dedicated exclusively for religious purposes, is guilty of a misdemeanor. [1943 c 247 § 28; Rem. Supp. 1943 § 3778-28.]

68.08.140 Opening graves—Stealing body—Receiving same. Every person who shall remove the dead body of a human being, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for

dissection, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall purchase or receive, except for burial or cremation, any such dead body, or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where such dead body is deposited while awaiting burial or cremation, with intent to remove said body or any part thereof, for the purpose of selling or demanding money for the same, for dissection, from malice or wantonness, or with intent to sell or remove the coffin or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the body, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both. [1909 c 249 § 239; RRS § 2491. FORMER PART OF SECTION: 1943 c 247 § 25 now codified as RCW 68.08.145.]

68.08.145 Removing remains—Penalty. Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment, with intent to sell it, or to dissect it, without authority of law, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both. [1943 c 247 § 25; Rem. Supp. 1943 c 3778–25. Formerly RCW 68.08.140, part.]

68.08.150 Mutilating, disinterring human remains—Penalty. Every person who mutilates, disinters, or removes from the place of interment any human remains without authority of law, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both. [1943 c 247 § 26; Rem. Supp. 1943 § 3778–26.]

68.08.160 Liability for cost of disposing of remains. The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

- (1) The surviving spouse.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.

The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent. [1943 c 247 § 29; Rem. Supp. 1943 § 3778–29.]

County burial of indigent deceased veterans: RCW 73.08.070.

Disposal of remains of indigent persons: RCW 36.39.030.

Order of payment of debts of estate: RCW 11.76.110.

Welfare and relief, funeral expenses: RCW 74.08.120.

68.08.170 Effect of authorization. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty. [1943 c 247 § 30; Rem. Supp. 1943 § 3778–30.]

68.08.180 Right to rely on authorization—State agency funding for cremation. The cemetery authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A cemetery authority is not liable for interring or cremating pursuant to such authorization, unless it has actual notice that such representation is untrue.

In the event the state of Washington or any of its agencies provide the funds for the disposition of any remains and the state or its agency elects to provide the funds for cremation only, the cemetery authority shall not be criminally or civilly liable for cremating the remains. [1979 c 21 § 14; 1943 c 247 § 31; Rem. Supp. 1943 § 3778–31.]

68.08.190 Liability for damages—Limitation. No action shall lie against any cemetery authority relating to the remains of any person which have been left in its possession for a period of two years, unless a written contract has been entered into with the cemetery authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a cemetery in the state of Washington. [1943 c 247 § 32; Rem. Supp. 1943 § 3778–32.]

Limitation of actions: Chapter 4.16 RCW.

68.08.200 Permission to remove remains. The remains of a deceased person may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

- (1) The surviving spouse.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.
- (4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: *Provided*, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority. [1943 c 247 § 33; Rem. Supp. 1943 § 3778–33.]

68.08.210 Notice for order to remove remains. Notice of application to the court for such permission shall be given, at least ten days prior thereto, personally, or at least fifteen days prior thereto if by mail, to the cemetery authority and to the persons not consenting, and to every other person on whom service of notice may be required by the court. [1943 c 247 § 34; Rem. Supp. 1943 § 3778-34.]

68.08.220 Exceptions. RCW 68.08.200 and 68.08.210 do not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by a cemetery authority from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor do they apply to the disinterment of remains upon order of court or coroner. [1943 c 247 § 35; Rem. Supp. 1943 § 3778-35.]

68.08.230 Undisposed of remains—Rules and regulations. Whenever any dead human body shall have been in the lawful possession of any person, firm, corporation or association for a period of one year or more, or whenever the incinerated remains of any dead human body have been in the lawful possession of any person, firm, corporation or association for a period of two years or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect or refuse for such periods of time, respectively, to direct the disposition to be made of such body or remains, such body or remains may be disposed of by the person, firm, corporation or association having such lawful possession thereof, under and in accordance with such rules and regulations as may be made and promulgated by said director of licensing, not inconsistent with any statute of the state of Washington or rule or regulation prescribed by the state board of health. [1979 c 158 § 218; 1937 c 108 § 14; RRS § 8323-3.]

68.08.232 Undisposed of remains—Entrusting to funeral homes or mortuaries. See RCW 36.24.155.

68.08.240 Record of remains to be kept. The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under his charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director. [1943 c 247 § 39; Rem. Supp. 1943 § 3778-39.]

68.08.245 Possession of cremated remains. The person or persons determined under RCW 68.08.160 as having authority to order cremation shall be entitled to possession of the cremated remains without further intervention by the state or its political subdivisions. [1977 c 47 § 4.]

68.08.290 Donation of remains for medical purposes—County coroner laws applicable. The provisions of RCW 68.08.250 through 68.08.290 shall be subject to the provisions of law with respect to the duties of county coroners. [1961 c 90 § 6.]

68.08.300 Corneal tissue for transplantation—Authority of county coroner, medical examiner or designee to provide—Conditions. In any case where a patient is in need of corneal tissue for a transplantation, the county coroner, or county medical examiner or designee, may provide corneal tissue, from decedents under his/her jurisdiction, upon the request of an eye bank approved and authorized to make such requests by the secretary of the department of social and health services, subject to the following conditions:

(1) Ready identification of the decedent is impossible, or

(2) A reasonable effort to obtain such consent as is required under RCW 68.08.510 is made, within the time period during which corneal tissue is a viable transplant, and no objection by the next of kin is known, and

(3) Removal of the cornea for transplantation will not interfere with the subsequent course of an investigation or autopsy or alter the post mortem facial appearance of the decedent. [1975-'76 2nd ex.s. c 60 § 1.]

68.08.305 Corneal tissue for transplantation—Presumption of good faith. In any subsequent civil action in which the next of kin of a decedent contends that he/she affirmatively informed the county coroner or medical examiner or designee of his/her objection to removal of corneal tissue from the decedent, it shall be presumed that the county coroner or medical examiner acted in good faith and without knowledge of the objection. [1975-'76 2nd ex.s. c 60 § 2.]

UNIFORM ANATOMICAL GIFT ACT

68.08.500 Definitions. (1) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Donor" means an individual who makes a gift of all or part of his body.

(4) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(5) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(6) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(7) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(8) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America. [1969 c 80 § 2.]

68.08.510 Gift of any part of body to take effect upon death authorized—Who may make—Priorities—Examination—Rights of donee paramount. (1) Any individual of sound mind and eighteen years of age or more may give all or any part of his body for any purpose specified in RCW 68.08.520, the gift to take effect upon death.

(2) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in RCW 68.08.520:

- (a) the spouse,
- (b) an adult son or daughter,
- (c) either parent,
- (d) an adult brother or sister,
- (e) a guardian of the person of the decedent at the time of his death,
- (f) any other person authorized or under obligation to dispose of the body.

(3) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (2) may make the gift after death or during the terminal illness.

(4) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(5) The rights of the donee created by the gift are paramount to the rights of others except as provided by RCW 68.08.560(4). [1969 c 80 § 3.]

68.08.520 Eligible donees—Eye removal by embalmers. (1) The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

- (a) Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;
- (b) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy;
- (c) Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or
- (d) Any specified individual for therapy or transplantation needed by him.

(2) If the part of the body that is the gift is an eye, the donee or the person authorized to accept the gift may employ or authorize a qualified embalmer, licensed under chapter 18.39 RCW, to remove the eye. [1979 c 3 § 1; 1969 c 80 § 4.]

68.08.530 Gift by will, card, document, or driver's license—Procedures. (1) A gift of all or part of the body under RCW 68.08.510(1), may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the

gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(2) A gift of all or part of the body under RCW 68.08.510(1), may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(3) A gift of all or part of the body under RCW 68.08.510(1) may also be made by a statement provided for on Washington state driver's licenses. The gift becomes effective upon the death of the licensee. The statement must be signed by the licensee in the presence of two witnesses, who must sign the statement in the presence of the donor. Delivery of the license during the donor's lifetime is not necessary to make the gift valid. The gift shall become invalidated upon expiration, cancellation, revocation, or suspension of the license, and the gift must be renewed upon renewal of each license: *Provided*, That the statement of gift herein provided for shall contain a provision, including a clear instruction to the donor, providing for a means by which the donor may at his will revoke such gift: *Provided further*, That nothing in this chapter shall be construed to invalidate a donor card located elsewhere.

(4) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(5) Notwithstanding RCW 68.08.560(2), the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(6) Any gift by a person designated in RCW 68.08.510(2), shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message. [1975 c 54 § 2; 1969 c 80 § 5.]

Driver's licenses, anatomical gift statements: RCW 46.20.113.

68.08.540 Delivery of will, card or other document to specified donee. If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed

copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts it for safe-keeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination. [1969 c 80 § 6.]

68.08.550 Amendment or revocation of gift. (1) If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(a) the execution and delivery to the donee of a signed statement;

(b) an oral statement made in the presence of two persons and communicated to the donee;

(c) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee;

(d) a signed card or document found on his person or in his effects.

(2) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) above, or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(3) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (1) above. [1969 c 80 § 7.]

68.08.560 Acceptance or rejection of gift—Time of death—Liability for damages. (1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who tends the donor at his death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(3) A person who acts in good faith in accord with the terms of RCW 68.08.500 through 68.08.610 or with the anatomical gift laws of another state (or a foreign country) is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(4) The provisions of RCW 68.08.500 through 68.08.610 are subject to the laws of this state prescribing powers and duties with respect to autopsies. [1969 c 80 § 8.]

68.08.600 Uniformity. RCW 68.08.500 through 68.08.610 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1969 c 80 § 9.]

68.08.610 Short title. RCW 68.08.500 through 68.08.610 may be cited as the "Uniform Anatomical Gift Act". [1969 c 80 § 11.]

Chapter 68.12

PUBLIC CEMETERIES AND MORGUES

Sections

68.12.010	Morgues authorized in certain counties.
68.12.020	Coroner to control morgue—Expense.
68.12.030	Counties and cities may provide for burial, acquire cemeteries, etc.
68.12.040	Cities and towns may own, improve, etc., cemeteries.
68.12.045	Cities and towns may provide for a cemetery board.
68.12.050	Cemetery improvement fund.
68.12.060	Care and investment of fund.
68.12.065	Approval of investments.
68.12.070	Cemetery fund—Management.
68.12.080	Books of account—Audit.

Cemeteries, powers of cities, towns, townships: RCW 35.13.180, 35-22.280, 35.23.440, 35.24.300, 35.27.370(2), and 45.12.100.

Taxation, exemptions: RCW 84.36.020.

68.12.010 Morgues authorized in certain counties. In counties of the first class of more than two hundred and fifty thousand population, the county commissioners, within three months after the taking effect of this act and in counties which shall hereafter attain a population of more than two hundred and fifty thousand, within one year after attaining such population, may at their discretion provide and equip a public morgue together with suitable morgue wagon for the conveyance, receipt and proper disposition of the bodies of all deceased persons not claimed by relatives, and of all dead bodies which are by law subject to a post mortem or coroner's inquest: *Provided, however,* That only one public morgue may be established in any county. [1917 c 90 § 1; RRS § 6040.]

Effective date—1917 c 90: The effective date of this act is midnight June 6, 1917, see preface 1917 session laws.

68.12.020 Coroner to control morgue—Expense. Such morgue shall be under the control and management of the coroner who shall have power with the advice and consent of the county commissioners, to employ the necessary deputies and employees; and, with the advice and consent of the county commissioners, to fix their salaries and compensation, which, together with the expenses of operating such morgue, shall be paid monthly out of the county treasury. [1917 c 90 § 2; RRS § 6041.]

68.12.030 Counties and cities may provide for burial, acquire cemeteries, etc. Each and every county, town or city, shall have power to provide a hearse and pall for burial of the dead, and to procure and hold lands for burying grounds, and to make regulations and fence the same, and to preserve the monuments erected therein, and to levy and collect the necessary taxes for that purpose, in the same manner as other taxes are levied and collected. [1857 p 28 § 3; RRS § 3772.]

68.12.040 Cities and towns may own, improve, etc., cemeteries. Any city or town may acquire, hold, or improve land for cemetery purposes, and may sell lots therein, and may provide by ordinance that a specified percentage of the proceeds therefrom be set aside and invested, and the income from the investment be used in the care of the lots, and may take and hold any property devised, bequeathed or given upon trust, and apply the income thereof for the improvement or embellishment of the cemeteries or the erection or preservation of structures, fences, or walks therein, or for the repair, preservation, erection, or renewal of any tomb, monument, gravestone, fence, railing, or other erection at or around a cemetery, lot, or plat, or for planting and cultivating trees, shrubs, flowers, or plants in or around the lot or plot, or for improving or embellishing the cemetery in any other manner or form consistent with the design and purpose of the city, according to the terms of the grant, devise, or bequest. [1955 c 378 § 1; 1909 c 156 § 1; RRS § 3773.]

68.12.045 Cities and towns may provide for a cemetery board. The legislative body of any city or town may provide by ordinance for a cemetery board to be appointed by the mayor in cities and towns operating under the mayor-council form of government, by the city commission in cities operating under the commission form of government, and by the city manager in cities and towns operating under the council-manager form of government: *Provided further*, That no ordinance shall be enacted, pursuant to this section, in conflict with provisions contained in charters of cities of the first class. [1955 c 378 § 2.]

68.12.050 Cemetery improvement fund. All moneys received in the manner above provided shall be deposited with the city treasurer, and shall be kept apart in a fund known as the cemetery improvement fund, and shall be paid out only upon warrants drawn by the order of the cemetery board, if such a board exists, or by order of the body, department, commission, or committee duly authorized by ordinance to issue such an order, or by the legislative body of a city or town, which order shall be approved by such legislative body if such order is not issued by the legislative body, and shall be indorsed by the mayor and attested by the city comptroller or other authorized officer. [1955 c 378 § 3; 1909 c 156 § 4; RRS § 3776.]

68.12.060 Care and investment of fund. It shall be the duty of the cemetery board and other body or commission having in charge the care and operation of cemeteries to invest all sums set aside from the sale of lots, and all sums of money received, and to care for the income of all money and property held in trust for the purposes designated herein: *Provided, however*, That all investments shall be made in municipal, county, school or state bonds, general obligation warrants of the city owning such cemetery, or in first mortgages on good and improved real estate. [1933 c 91 § 1; 1909 c 156 § 2; RRS § 3774. FORMER PART OF SECTION: 1909 c 156 § 3 now codified as RCW 68.12.065.]

68.12.065 Approval of investments. All investments shall be approved by the council or legislative body of the city. [1909 c 156 § 3; RRS § 3775. Formerly RCW 68.12.060, part.]

68.12.070 Cemetery fund—Management. The said city shall, by ordinance, make all necessary rules and regulations concerning the control and management of said fund to properly safeguard the same, but shall in nowise be liable for any of said funds except a misappropriation thereof, and shall not have power to bind the city or said fund for any further liability than whatever net interest may be actually realized from such investments, and shall not be liable to any particular person for more than the proportionate part of such net earnings. [1909 c 156 § 6; RRS § 3778.]

68.12.080 Books of account—Audit. Accurate books of account shall be kept of all transactions pertaining to said fund, which books shall be open to the public for inspection and shall be audited by the auditing committee of said city. [1909 c 156 § 5; RRS § 3777.]

Chapter 68.16 CEMETERY DISTRICTS

Sections	
68.16.010	Establishment authorized.
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68.16.900	Severability—1947 c 6.

Taxation, exemptions: RCW 84.36.020.

68.16.010 Establishment authorized. Cemetery districts may be established in all counties and on any island in any county, as in this chapter provided. [1971 c 19 § 1; 1957 c 99 § 1; 1953 c 41 § 1; 1947 c 27 § 1; 1947 c 6 § 1; Rem. Supp. 1947 § 3778-150.]

68.16.020 Petition—Requisites—Examination. For the purpose of forming a cemetery district, a petition designating the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges and legal subdivisions, signed by not less than fifteen percent of the qualified registered electors, who are property owners or are purchasing property under contract and who are resident within the boundaries of the district, setting forth the object of the formation of such district and stating that the establishment thereof will be conducive to the public welfare and convenience, shall be filed with the county auditor of the county within which the proposed district is located, accompanied by an obligation signed by two or more petitioners agreeing to pay the cost of publishing the notice hereinafter provided for. The county auditor shall, within thirty days from the date of filing of such petition, examine the signatures and certify to the sufficiency or insufficiency thereof and for such purpose shall have access to registration books and records in possession of the registration officers of the election precincts included in whole or in part within the boundaries of the proposed district and to the tax rolls and other records in the offices of the county assessor and county treasurer. No person having signed a petition shall be allowed to withdraw his name therefrom after it has been filed with the county auditor. If the petition is found to contain a sufficient number of signatures of qualified persons, the county auditor shall transmit it, with his certificate of sufficiency attached, to the board of county commissioners which shall thereupon, by resolution entered upon its minutes, receive the same and fix a day and hour when it will publicly hear said petition. [1947 c 6 § 2; Rem. Supp. 1947 § 3778-151.]

68.16.030 Hearing, place and date of. The hearing on such petition shall be at the office of the board of county commissioners and shall be held not less than twenty nor more than forty days from the date of receipt thereof from the county auditor. The hearing may be completed on the day set therefor or it may be adjourned from time to time as may be necessary, but such adjournment or adjournments shall not extend the time for determining said petition more than sixty days in all from the date of receipt by the board. [1947 c 6 § 3; Rem. Supp. 1947 § 3778-152.]

68.16.040 Publication and posting of petition and notice of hearing. A copy of the petition with the names of petitioners omitted, together with a notice signed by the clerk of the board of county commissioners stating the day, hour and place of the hearing, shall be published in three consecutive weekly issues of the official newspaper of the county prior to the date of hearing. Said clerk shall also cause a copy of the petition with the

names of petitioners omitted, together with a copy of the notice attached, to be posted for not less than fifteen days before the date of hearing in each of three public places within the boundaries of the proposed district, to be previously designated by him and made a matter of record in the proceedings. [1947 c 6 § 4; Rem. Supp. 1947 § 3778-153.]

68.16.050 Hearing—Inclusion and exclusion of lands. At the time and place fixed for hearing on the petition or at any adjournment thereof, the board of county commissioners shall hear said petition and receive such evidence as it may deem material in favor of or opposed to the formation of the district or to the inclusion therein or exclusion therefrom of any lands, but no lands not within the boundaries of the proposed district as described in the petition shall be included without a written waiver describing the land, executed by all persons having any interest of record therein, having been filed in the proceedings. No land within the boundaries described in petition shall be excluded from the district. [1947 c 6 § 5; Rem. Supp. 1947 § 3778-154.]

68.16.060 Election on formation of district and to elect first commissioners. The board of county commissioners shall have full authority to hear and determine the petition, and if it finds that the formation of the district will be conducive to the public welfare and convenience, it shall by resolution so declare, otherwise it shall deny the petition. If the board finds in favor of the formation of the district, it shall designate the name and number of the district, fix the boundaries thereof, and cause an election to be held therein for the purpose of determining whether or not the district shall be organized under the provisions of this chapter, and for the purpose of electing its first cemetery district commissioners. The board shall, prior to calling the said election, name three registered resident electors who are property owners or are purchasing property under contract within the boundaries of the district as candidates for election as cemetery district commissioners. [1947 c 6 § 6; Rem. Supp. 1947 § 3778-155.]

68.16.070 Election, how conducted—Notice. Except as otherwise provided in this chapter, the election shall insofar as possible be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided by law for special elections in the county. For the purpose of such election county voting precincts may be combined or divided and redefined, and the territory in the district shall be included in one or more election precincts as may be deemed convenient, a polling place being designated for each such precinct. The notice of election shall state generally and briefly the purpose thereof, shall give the boundaries of the proposed district, define the election precinct or precincts, designate the polling place for each, mention the names of the candidates for first cemetery district commissioners, and name the day of the election and the hours during which the polls will be open. [1947 c 6 § 7; Rem. Supp. 1947 § 3778-156.]

Elections: Title 29 RCW.

68.16.080 Election ballot. The ballot for said election shall be in such form as may be convenient but shall present the propositions substantially as follows:

----- (insert county name) ----- cemetery district No.
 ----- (insert number) -----
 ----- Yes -----
 ----- (insert county name) ----- cemetery district No.
 ----- (insert number) -----
 ----- No -----

and shall specify the names of the candidates nominated for election as the first cemetery district commissioners with appropriate space to vote for the same. [1947 c 6 § 8; Rem. Supp. 1947 § 3778-157.]

68.16.090 Canvass of returns—Resolution of organization. The returns of such election shall be canvassed at the court house on the Monday next following the day of the election, but the canvass may be adjourned from time to time if necessary to await the receipt of election returns which may be unavoidably delayed. The canvassing officials, upon conclusion of the canvass, shall forthwith certify the results thereof in writing to the board of county commissioners. If upon examination of the certificate of the canvassing officials it is found that two-thirds of all the votes cast at said election were in favor of the formation of the cemetery district, the board of county commissioners shall, by resolution entered upon its minutes, declare such territory duly organized as a cemetery district under the name theretofore designated and shall declare the three candidates receiving the highest number of votes for cemetery commissioners, the duly elected first cemetery commissioners of the district. The clerk of the board of county commissioners shall certify a copy of the resolution and cause it to be filed for record in the offices of the county auditor and the county assessor of the county. The certified copy shall be entitled to record without payment of a recording fee. If the certificate of the canvassing officials shows that the proposition to organize the proposed cemetery district failed to receive two-thirds of the votes cast at said election, the board of county commissioners shall enter a minute to that effect and all proceedings theretofore had shall become null and void. [1947 c 6 § 9; Rem. Supp. 1947 § 3778-158.]

68.16.100 Review—Organization complete. Any person, firm or corporation having a substantial interest involved, and feeling aggrieved by any finding, determination or resolution of the board of county commissioners under the provisions of this chapter, may appeal within five days after such finding, determination or resolution was made to the superior court of the county in the same manner as provided by law for appeals from orders of said board. After the expiration of five days from the date of the resolution declaring the district organized, and upon filing of certified copies thereof in the offices of the county auditor and county assessor, the formation of the district shall be complete and its legal

existence shall not thereafter be questioned by any person by reason of any defect in the proceedings had for the creation thereof. [1947 c 6 § 10; Rem. Supp. 1947 § 3778-159.]

Appeals from action of board of county commissioners: RCW 36.32.330.

68.16.110 General powers of district. Cemetery districts created under this chapter shall be deemed to be municipal corporations within the purview of the Constitution and laws of the state of Washington. They shall constitute bodies corporate and possess all the usual powers of corporations for public purposes. They shall have full authority to carry out the objects of their creation, and to that end are empowered to acquire, hold, lease, manage, occupy and sell real and personal property or any interest therein; to enter into and perform any and all necessary contracts; to appoint and employ necessary officers, agents and employees; to contract indebtedness; to borrow money; to levy and enforce the collection of taxes against the lands within the district, and to do any and all lawful acts to effectuate the purposes of this chapter. [1967 c 164 § 6; 1947 c 6 § 11; Rem. Supp. 1947 § 3778-160.]

Purpose—1967 c 164: See note following RCW 4.96.010.

Severability—1967 c 164: See note following RCW 4.96.010.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: RCW 4.96.010.

68.16.111 Contracts with third class cities, towns, for public facilities and services—Joint purchasing. See RCW 35.24.274 and 35.24.275.

Townships—Joint acquisition, operation and maintenance of public cemeteries: RCW 45.12.021.

68.16.112 Public cemetery facilities or services—Cooperation with public or private agencies—Joint purchasing. A cemetery district may jointly operate or provide, cooperate to operate and provide and/or contract for a term of not to exceed five years to provide or have provided public cemetery facilities or services, with any other public or private agency, including out of state public agencies, which each is separately authorized to operate or provide, under terms mutually agreed upon by such public or private agencies. The governing body of a cemetery district may join with any other public or private agency in buying supplies, equipment, and services collectively. [1963 c 112 § 3.]

68.16.113 Public cemetery facilities or services—“Public agency” defined. As used in RCW 68.16.112, “public agency” means counties, cities and towns, special districts, or quasi municipal corporations. [1963 c 112 § 2.]

68.16.120 Right of eminent domain. The taking and damaging of property or rights therein by any cemetery district to carry out the purposes of its creation, are hereby declared to be for a public use, and any such district shall have and exercise the power of eminent domain to acquire any property or rights therein, either

inside or outside the district for the use of such district. In exercising the power of eminent domain, a district shall proceed in the manner provided by law for the appropriation of real property or rights therein by private corporations. It may at its option unite in a single action proceedings to condemn property held by separate owners. Two or more condemnation suits instituted separately may also in the discretion of the court be consolidated upon motion of any interested party into a single action. In such cases the jury shall render separate verdicts for each tract of land in different ownership. No finding of the jury or decree of the court as to damages in any condemnation suit instituted by the district shall be held or construed to destroy the right of the district to levy and collect taxes for any and all district purposes against the uncondemned land situated within the district. [1947 c 6 § 12; Rem. Supp. 1947 § 3778-161.]

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

Eminent domain by corporations: Chapter 8.20 RCW.

68.16.130 Power to do cemetery business—District may embrace certain cities and towns—Eminent domain exception. (1) A cemetery district organized under this chapter shall have power to acquire, establish, maintain, manage, improve and operate cemeteries and conduct any and all of the businesses of a cemetery as defined in this title. A cemetery district shall constitute a cemetery authority as defined in this title and shall have and exercise all powers conferred thereby upon a cemetery authority and be subject to the provisions thereof.

(2) A cemetery district may include within its boundaries the lands embraced within the corporate limits of any incorporated city or town up to and including third class cities in all counties and in any such cases the district may acquire any cemetery or cemeteries theretofore maintained and operated by any such city or town and proceed to maintain, manage, improve and operate the same under the provisions hereof. In such event the governing body of the city or town, after the transfer takes place, shall levy no cemetery tax. The power of eminent domain heretofore conferred shall not extend to the condemnation of existing cemeteries within the district: *Provided*, That no cemetery district shall operate a cemetery within the corporate limits of any city or town where there is a private cemetery operated for profit. [1971 c 19 § 2; 1959 c 23 § 2; 1957 c 39 § 1; 1947 c 6 § 13; Rem. Supp. 1947 § 3778-162.]

68.16.140 District commissioners—Election. The affairs of the district shall be managed by a board of cemetery district commissioners composed of three qualified electors of the district. Members of the board shall receive no compensation for their services, but shall receive expenses necessarily incurred in attending meetings of the board or when otherwise engaged in district business. The board shall fix the compensation to be paid the secretary and other employees of the district. The first three cemetery district commissioners shall serve only until the first day in January following the next general election, provided such election occurs thirty or more days after the formation of the district, and until their

successors have been elected and qualified and have assumed office in accordance with RCW 29.04.170. At the next general district election, as provided in RCW 29.13.020, provided it occurs thirty or more days after the formation of the district, three members of the board of cemetery commissioners shall be chosen. They shall have the same qualifications as required of the first three cemetery commissioners. The candidate receiving the highest number of votes shall serve for a term of six years beginning on the first day in January following; the candidate receiving the next higher number of votes shall serve for a term of four years from said date; and the candidate receiving the next higher number of votes shall serve for a term of two years from said date. Upon the expiration of their respective terms, all cemetery commissioners shall be elected for terms of six years to begin on the first day in January next succeeding the day of election and shall serve until their successors have been elected and qualified and assume office in accordance with RCW 29.04.170. Elections shall be called, noticed, conducted and canvassed by the same officials as provided for general county elections. The polling places for a cemetery district election shall be those of the county voting precincts which include any of the territory within the cemetery district, and may be located outside the boundaries of the district, and no such election shall be held irregular or void on that account. [1979 1st ex.s. c 126 § 40; 1947 c 6 § 14; Rem. Supp. 1947 § 3778-163.]

Purpose—1979 1st ex.s. c 126: See RCW 29.04.170(1).

68.16.150 Declarations of candidacy. Not later than fifteen days before the day of election, any qualified registered elector of the district desiring to become a candidate for the office of cemetery district commissioner shall file with the county auditor of his county a statement of his candidacy in the same manner as provided for candidates for county office. All electors so filing their statements shall be entitled to have their names appear as candidates on the election ballot. [1947 c 6 § 15; Rem. Supp. 1947 § 3778-164.]

Declaration of candidacy: RCW 29.18.030 through 29.18.060.

68.16.160 Vacancies. In case a vacancy occurs in the office of cemetery commissioner, it shall be filled by appointment of a qualified registered elector of the district by the board of county commissioners, and the person appointed shall serve until his successor has been elected and qualified. At the next general election, provided there is sufficient time for the nomination of candidates for the office of cemetery commissioner after the filling of a vacancy in such office, there shall be elected a cemetery commissioner to serve for the remainder of the unexpired term. [1947 c 6 § 16; Rem. Supp. 1947 § 3778-165.]

68.16.170 Special elections. Special elections submitting propositions to the qualified voters of the district may be called at any time by resolution of the cemetery commissioners, and shall be called, noticed, held, conducted and canvassed in the same manner and by the

same officials as provided for the election to determine whether the district shall be created. The qualifications of electors at all district elections shall be the same as for general state and county elections. [1947 c 6 § 17; Rem. Supp. 1947 § 3778-166.]

Qualifications of electors: RCW 29.07.070.

68.16.180 Oath of commissioners. Each cemetery commissioner, before assuming the duties of his office, shall take and subscribe an official oath to faithfully discharge the duties of his office, which oath shall be filed in the office of the county clerk. [1947 c 6 § 18; Rem. Supp. 1947 § 3778-167.]

68.16.190 Organization of board—Secretary—Office—Meetings—Powers. The board of cemetery district commissioners shall organize and elect a chairman from their number and shall appoint a secretary for such term as they may determine. The secretary shall keep a record of proceedings of the board and perform such other duties as may be prescribed by law or by the board, and shall also take and subscribe an oath for the faithful discharge of his duties, which shall be filed with the county clerk. The office of the board of cemetery commissioners and principal place of business of the district shall be at some place in the district designated by the board. The board shall hold regular monthly meetings at its office on such day as it may by resolution determine and may adjourn such meetings as may be required for the transaction of business. Special meetings of the board may be called at any time by a majority of the commissioners or by the secretary and the chairman of the board. Any commissioner not joining in the call of a special meeting shall be entitled to three days written notice by mail of such meeting, specifying generally the business to be transacted. All meetings of the board of cemetery commissioners shall be public and a majority shall constitute a quorum. All records of the board shall be open to the inspection of any elector of the district at any meeting of the board. The board shall adopt a seal for the district; manage and conduct the affairs of the district; make and execute all necessary contracts; employ any necessary service, and promulgate reasonable rules and regulations for the government of the district and the performance of its functions and generally perform all acts which may be necessary to carry out the purposes for which the district was formed. [1947 c 6 § 19; Rem. Supp. 1947 § 3778-168.]

68.16.200 Duty of county treasurer—Cemetery district fund. It shall be the duty of the county treasurer of the county in which any cemetery district is situated to receive and disburse all district revenues and collect all taxes authorized and levied under this chapter. There is hereby created in the office of county treasurer of each county in which a cemetery district shall be organized for the use of the district, a cemetery district fund. All taxes levied for district purposes when collected shall be placed by the county treasurer in the cemetery district fund. [1947 c 6 § 20; Rem. Supp. 1947 § 3778-169.]

68.16.210 Tax levy authorized for fund. Annually, after the county board of equalization has equalized assessments for general tax purposes, the secretary of the district shall prepare a budget of the requirements of the cemetery district fund, certify the same and deliver it to the board of county commissioners in ample time for such board to levy district taxes. At the time of making general tax levies in each year, the board of county commissioners shall levy taxes required for cemetery district purposes against the real and personal property in the district in accordance with the equalized valuation thereof for general tax purposes, and as a part of said general taxes. Such levies shall be part of the general tax roll and be collected as a part of general taxes against the property in the district. [1947 c 6 § 21; Rem. Supp. 1947 § 3778-170.]

68.16.220 Disbursement of fund. The county treasurer shall disburse the cemetery district fund upon warrants issued by the county auditor on vouchers approved and signed by a majority of the board of cemetery commissioners and the secretary thereof. [1947 c 6 § 22; Rem. Supp. 1947 § 3778-171.]

68.16.230 Limitation of indebtedness—Limitation of tax levy. The board of cemetery commissioners shall have no authority to contract indebtedness in any year in excess of the aggregate amount of the currently levied taxes, which annual tax levy for cemetery district purposes shall not exceed eleven and one-quarter cents per thousand dollars of assessed valuation. [1973 1st ex.s. c 195 § 77; 1947 c 6 § 23; Rem. Supp. 1947 § 3778-172.]

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

68.16.240 Dissolution of districts. Cemetery districts may be dissolved by a majority vote of the electors at an election called for that purpose, which shall be conducted in the same manner as provided for special elections, and no further district obligations shall thereafter be incurred, but such dissolution shall not abridge or cancel any of the outstanding obligations of the district, and the board of county commissioners shall have authority to make annual levies against the lands included within the district until the obligations of the district are fully paid. When the obligations are fully paid, any moneys remaining in the cemetery district fund and all collections of unpaid district taxes shall be transferred to the current expense fund of the county. [1947 c 6 § 24; Rem. Supp. 1947 § 3778-173.]

Dissolution: Chapter 53.48 RCW.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

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

68.16.900 Severability—1947 c 6. If any portion of this act shall be adjudged invalid or unconstitutional for any reason, such adjudication shall not affect, impair

or invalidate the remaining portions of the act. [1947 c 6 § 25; no RRS.]

Chapter 68.18

ANNEXATION AND MERGER OF CEMETERY DISTRICTS

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68.18.010	Annexation—Petition—Procedure.
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68.18.030	Merger—Petition—Procedure—Contents.
68.18.040	Merger—Petition—Rejection, concurrence or modification—Signatures.
68.18.050	Merger—Petition—Special election.
68.18.060	Merger—Petition—Election—Vote required—Merger effected.
68.18.070	Merger—Petition—When election dispensed with.
68.18.080	Merger—Preexisting obligations.
68.18.090	Merger—Transfer of all property, funds, assessments.
68.18.100	Merger and transfer of part of one district to adjacent district—Petition—Election—Vote.
68.18.110	Merger and transfer of part of one district to adjacent district—When election dispensed with.
68.18.120	Merger and transfer of part of one district to adjacent district—Preexisting indebtedness.

68.18.010 Annexation—Petition—Procedure.

Any territory contiguous to a cemetery district and not within the boundaries of a city or town other than as set forth in RCW 68.16.130 or other cemetery district may be annexed to such cemetery district by petition of fifteen percent of the qualified registered electors residing within the territory proposed to be annexed. Such petition shall be filed with the cemetery commissioners of the cemetery district and if the said cemetery commissioners shall concur in the said petition they shall then file such petition with the county auditor who shall within thirty days from the date of filing such petition examine the signatures thereof and certify to the sufficiency or insufficiency thereof. After the county auditor shall have certified to the sufficiency of the petition, the proceedings thereafter by the board of county commissioners, and the rights and powers and duties of the board of county commissioners, petitioners and objectors and the election and canvass thereof shall be the same as in the original proceedings to form a cemetery district: *Provided*, That the board of county commissioners shall have authority and it shall be its duty to determine on an equitable basis, the amount of obligation which the territory to be annexed to the district shall assume, if any, to place the taxpayers of the existing district on a fair and equitable relationship with the taxpayers of the territory to be annexed by reason of the benefits of coming into a going district previously supported by the taxpayers of the existing district, and such obligation may be paid to the district in yearly installments to be fixed by the county board if within the limits as outlined in RCW 68.16.230 and included in the annual tax levies against the property in such annexed territory until fully paid. The amount of the obligation and the plan of payment thereof filed by the county board shall be set out in general terms in the notice of election for annexation:

Provided, That the special election shall be held only within the boundaries of the territory proposed to be annexed to said cemetery district. Upon the entry of the order of the board of county commissioners incorporating such contiguous territory within such existing cemetery district, said territory shall become subject to the indebtedness, bonded or otherwise, of said existing district in like manner as the territory of said district. Should such petition be signed by sixty percent of the qualified registered electors residing within the territory proposed to be annexed, and should the cemetery commissioners concur therein, an election in such territory and a hearing on such petition shall be dispensed with and the board of county commissioners shall enter its order incorporating such territory within the said existing cemetery district. [1969 ex.s. c 78 § 1.]

68.18.020 Merger—Authorized. A cemetery district organized under chapter 68.16 RCW may merge with another such district lying adjacent thereto, upon such terms and conditions as they agree upon, in the manner hereinafter provided. The district desiring to merge with another district shall hereinafter be called the "merging district", and the district into which the merger is to be made shall be called the "merger district". [1969 ex.s. c 78 § 2.]

68.18.030 Merger—Petition—Procedure—

Contents. To effect such a merger, a petition therefor shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition upon their own initiative, and they shall file such a petition when it is signed by fifteen percent of the qualified electors resident in the merging district and presented to them. The petition shall state the reasons for the merger; give a detailed statement of the district's finances, listing its assets and liabilities; state the terms and conditions under which the merger is proposed; and pray for the merger. [1969 ex.s. c 78 § 3.]

68.18.040 Merger—Petition—Rejection, concurrence or modification—Signatures.

The board of the merger district may, by resolution, reject the petition, or it may concur therein as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution thereon to the merging district. If the petition is concurred in as presented or as modified, the board of the merging district shall forthwith present the petition to the auditor of the county in which the merging district is situated, who shall within thirty days examine the signatures thereon and certify to the sufficiency or insufficiency thereof, and for that purpose he shall have access to all registration books and records in the possession of the registration officers of the election precincts included, in whole or in part, within the merging district. Such books and records shall be prima facie evidence of truth of the certificate. No signatures may be withdrawn from the petition after the filing. [1969 ex.s. c 78 § 4.]

68.18.050 Merger—Petition—Special election. If the auditor finds that the petition contains the signatures of a sufficient number of qualified electors, he shall return it, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon such board shall adopt a resolution, calling a special election in the merging district, at which shall be submitted to the electors thereof, the question of the merger. [1969 ex.s. c 78 § 5.]

68.18.060 Merger—Petition—Election—Vote required—Merger effected. The board of [the] merging district shall notify the board of the merger district of the results of the election. If three-fifths of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1969 ex.s. c 78 § 6.]

68.18.070 Merger—Petition—When election dispensed with. If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary. In such case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of merger in the same manner and to the same effect as if the merger had been authorized by an election. [1969 ex.s. c 78 § 7.]

68.18.080 Merger—Preexisting obligations. None of the obligations of the merged districts or of a local improvement district therein shall be affected by the merger and dissolution, and all land liable to be assessed to pay any of such indebtedness shall remain liable to the same extent as if the merger had not been made, and any assessments theretofore levied against the land shall remain unimpaired and shall be collected in the same manner as if no merger had been made. The commissioners of the merged district shall have all the powers possessed at the time of the merger by the commissioners of the two districts, to levy, assess and cause to be collected all assessments against any land in both districts which may be necessary to provide for the payment of the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the merger: *Provided*, That the board of the merged district may, with the consent of the creditors of the districts merged, cancel any or all assessments theretofore levied, in accordance with the terms and conditions of the merger, to the end that the lands in the respective districts shall bear

their fair and proportionate share of such indebtedness. [1969 ex.s. c 78 § 8.]

68.18.090 Merger—Transfer of all property, funds, assessments. The commissioners of the merging district shall, forthwith upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments theretofore levied. [1969 ex.s. c 78 § 9.]

68.18.100 Merger and transfer of part of one district to adjacent district—Petition—Election—Vote. A part of one district may be transferred and merged with an adjacent district whenever such area can be better served by the merged district. To effect such a merger a petition, signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district. Such petition shall be promoted by one or more qualified electors within the area to be transferred. If the commissioners of the merging district act favorably upon the petition, then the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district act favorably upon the petition, an election shall be called in the area merged.

In the event that either board of cemetery commissioners should not concur with the petition, the petition may then be presented to a county review board established for such purposes, if there be no county review board for such purposes then to the state review board and if there be no state review board, then to the county commissioners of the county in which the area to be merged is situated, who shall decide if the area can be better served by such a merger; upon an affirmative decision an election shall be called in the area merged.

A majority of the votes cast shall be necessary to approve the transfer. [1969 ex.s. c 78 § 10.]

68.18.110 Merger and transfer of part of one district to adjacent district—When election dispensed with. If three-fifths of all the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the boards of the merging districts. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of transfer in the same manner and to the same effect as if the same had been authorized by an election. [1969 ex.s. c 78 § 11.]

68.18.120 Merger and transfer of part of one district to adjacent district—Preexisting indebtedness. When a part of one cemetery district is transferred to another as provided by RCW 68.18.100 and 68.18.110, said part shall be relieved of all liability for any indebtedness of the district from which it is withdrawn. However, the acquiring district shall pay to the losing district that portion of the latter's indebtedness for which the transferred part was liable. This amount shall not exceed the

proportion that the assessed valuation of the transferred part bears to the assessed valuation of the whole district from which said part is withdrawn. The adjustment of such indebtedness shall be based on the assessment for the year in which the transfer is made. The boards of commissioners of the districts involved in the said transfer and merger shall enter into a contract for the payment by the acquiring district of the above-referred to indebtedness under such terms as they deem proper, provided such contract shall not impair the security of existing creditors. [1969 ex.s. c 78 § 12.]

Chapter 68.20 PRIVATE CEMETERIES

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68.20.010 Incorporation required. It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation duly organized for that purpose. [1943 c 247 § 42; Rem. Supp. 1943 § 3778-42.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.20.020 Corporations, how organized. Any private corporation authorized by its articles so to do, may establish, maintain, manage, improve, or operate a cemetery, and conduct any or all of the businesses of a cemetery, either for or without profit to its members or stockholders. A nonprofit cemetery corporation may be organized in the manner provided in *chapter 24.16 RCW. A profit corporation may be organized in the manner provided in the general corporation laws of the state of Washington. [1943 c 247 § 43; Rem. Supp. 1943 § 3778-43. Prior: 1899 c 33 § 1; 1856-7 p 28 § 1.]

Reviser's note: *(1) Chapter 24.16 RCW was repealed by the Washington Nonprofit Corporation Act, 1967 c 235, chapter 24.03 RCW.

(2) This section does not apply to certain cemeteries. See RCW 68.48.070.

68.20.030 Powers of existing corporations enlarged. The powers, privileges and duties conferred and imposed upon any corporation, firm, copartnership, association, trust, or individual, existing and doing business under the laws of this state, are hereby enlarged as each particular case may require to conform to the provisions of *this act. [1943 c 247 § 45; Rem. Supp. 1943 § 3778-45.]

Reviser's note: *(1) "this act", see note following RCW 68.04.020.

(2) This section does not apply to certain cemeteries. See RCW 68.48.070.

68.20.040 Prior corporations not affected. The provisions of *this act do not affect the corporate existence or rights or powers of any cemetery organized under any law then existing prior to **the effective date of this act, and as to such cemeteries and their rights, powers specified in their charters or articles of incorporation, the laws under which the corporation was organized and existed and under which such rights and powers become fixed or vested are applicable. [1943 c 247 § 44; Rem. Supp. 1943 § 3778-44.]

Reviser's note: *(1) "this act", see note following RCW 68.04.020.

** (2) "the effective date of this act" is midnight June 9, 1943, see preface 1943 session laws.

(3) This section does not apply to certain cemeteries. See RCW 68.48.070.

68.20.050 General powers of cemetery corporations. Unless otherwise limited by the law under which created[,] cemetery authorities shall in the conduct of their business have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitation of general law as may be required, and may secure them by mortgage, deed of trust, or otherwise upon their property. [1943 c 247 § 59; Rem. Supp. 1943 § 3778-59.]

68.20.060 Specific powers—Rule making and enforcement. A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in RCW 68.20.061 through 68.20.067, 68.20.070 and 68.48.080. [1943 c 247 § 46; Rem. Supp. 1943 § 3778-46. Formerly RCW 68.20.070, part. FORMER PART OF SECTION: 1943 c 247 §§ 47 through 52 now codified as RCW 68.20.061 through 68.20.066.]

68.20.061 Specific powers—Control of property. It may restrict and limit the use of all property within its cemetery. [1943 c 247 § 47; Rem. Supp. 1943 § 3778-47. Formerly RCW 68.20.060, part.]

68.20.062 Specific powers—Regulation as to type of markers, monuments, etc. It may regulate the uniformity, class, and kind of all markers, monuments, and

other structures within the cemetery and its subdivisions. [1943 c 247 § 48; Rem. Supp. 1943 § 3778-48. Formerly RCW 68.20.060, part.]

68.20.063 Specific powers—Regulation or prohibition as to the erection of monuments, effigies, etc. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the cemetery. [1943 c 247 § 49; Rem. Supp. 1943 § 3778-49. Formerly RCW 68.20.060, part.]

68.20.064 Specific powers—Regulation of plants and shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the cemetery. [1943 c 247 § 50; Rem. Supp. 1943 § 3778-50. Formerly RCW 68.20.060, part.]

68.20.065 Specific powers—Prevention of interment. It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules and regulations. [1943 c 247 § 51; Rem. Supp. 1943 § 3778-51. Formerly RCW 68.20.060, part.]

68.20.066 Specific powers—Prevention of improper assemblages. It may regulate the conduct of persons and prevent improper assemblages in the cemetery. [1943 c 247 § 52; Rem. Supp. 1943 § 3778-52. Formerly RCW 68.20.060, part.]

68.20.067 Specific powers—Rules and regulations for general purposes. It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted. [1943 c 247 § 53; Rem. Supp. 1943 § 3778-53. Formerly RCW 68.20.070, part.]

68.20.070 Rules and regulations—Posting. The rules and regulations made pursuant to RCW 68.20.060 shall be plainly printed or typewritten and maintained subject to inspection in the office of the cemetery authority or in such place or places within the cemetery as the cemetery authority may prescribe. [1943 c 247 § 54; Rem. Supp. 1943 § 3778-54. FORMER PART OF SECTION: 1943 c 247 §§ 46 and 53 now codified as RCW 68.20.060 and 68.20.067.]

68.20.080 Cities and counties may regulate cemeteries. Cities and counties are authorized to enact ordinances regulating or prohibiting the establishment of new cemeteries or the extension of existing ones and to give power to local planning commissions to pass upon and make recommendations to local legislative bodies concerning the establishment or extension of cemeteries. [1943 c 247 § 143; Rem. Supp. 1943 § 3778-143.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.090 Permit required, when. It shall be unlawful for any person, firm, or corporation to establish or maintain any cemetery or to extend the boundaries of any existing cemetery in this state without a permit first having been applied for and permission obtained in accordance with the city and county ordinance and other zoning or statutory provisions governing the same. [1943 c 247 § 144; Rem. Supp. 1943 § 3778-144.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.100 Crematory record of caskets. No crematory shall hereafter cremate the remains of any human body without making a permanent signed record of the color, shape and outside covering of the casket consumed with such body, said record to be open to inspection of any person lawfully entitled thereto. [1943 c 247 § 57; Rem. Supp. 1943 § 3778-57. FORMER PART OF SECTION: 1943 c 247 § 58 now codified as RCW 68.20.105.]

68.20.105 Crematory record of caskets—Penalty. Each person violating any provision of RCW 68.20.100 shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 58; Rem. Supp. 1943 § 3778-58. Formerly RCW 68.20.100, part.]

68.20.110 Nonprofit cemetery association—Tax exempt land—Irreducible fund—Bonds. *Such association shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes without discrimination as to race, color, national origin or ancestry, and in nowise with a view to profit of the members of such association: *Provided*, That when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. Such association may by its bylaws provide that a stated percentage of the moneys realized from the sale of lots, donations or other sources of revenue, shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof may deem proper. The interest or income arising from the irreducible fund, provided for in any bylaws, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the lots sold to the members of such association, and where any bylaws has been enacted for the creation of an irreducible fund as herein provided for it cannot thereafter be amended in any manner whatever except for the purpose of increasing such fund. After paying for the land all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents or otherwise, shall be applied exclusively to laying out, preserving, protecting and embellishing the cemetery and the avenues leading thereto, and in the erection

of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts except for originally purchasing, laying out and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots. [1961 c 103 § 2; 1899 c 33 § 3; RRS § 3766. Formerly RCW 68.20.110 and 68.24.200.]

***Reviser's note:** The term "[s]uch association" appears in 1899 c 33 which act provided for the creation of cemetery associations pursuant to 1895 c 158 which was codified in chapter 24.16 RCW which was repealed by the Washington Nonprofit Corporation Act, 1967 c 235, chapter 24.03 RCW.

Construction—1961 c 103: See note following RCW 49.60.040.

Property taxes, exemptions: RCW 84.36.020.

68.20.120 Sold lots exempt from taxes, etc.—Nonprofit associations. Burial lots, sold by *such association shall be for the sole purpose of interment, and shall be exempt from taxation, execution, attachment or other claims, lien or process whatsoever, if used as intended, exclusively for burial purposes and in nowise with a view to profit. [1899 c 33 § 5; RRS § 3768. Formerly RCW 68.24.210.]

***Reviser's note:** "such association", see note following RCW 68.20.110.

Cemetery property exempt from execution: RCW 68.24.220.

Cemetery property exempt from taxation: RCW 84.36.020.

68.20.130 Ground plans. All *such associations shall cause a plan of their grounds and of the blocks and lots by them laid out, to be made and recorded, such blocks and lots to be numbered by regular consecutive numbers, and shall have power to enclose, improve and adorn the grounds and avenues, to erect buildings for the use of the association and to prescribe rules for the designation and adorning of lots and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which they may deem improper. An annual exhibit shall be made of the affairs of the association. The plan, or plat, hereinbefore required, shall be recorded by the proper county auditor for a fee not to exceed ten cents a lot, and if the actual cost of recording the same shall be less than ten cents a lot, then said auditor shall record the same at the actual cost thereof. [1905 c 64 § 1; 1899 c 33 § 6; RRS § 3769. Formerly RCW 68.24.230.]

***Reviser's note:** "such associations", see note following RCW 68.20.110.

County auditor's fees, generally: RCW 36.18.010.

Chapter 68.24

CEMETERY PROPERTY

Sections

68.24.010 Right to acquire property.

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 68.24.030 Declaration of dedication and maps—Filing.
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 68.24.220 Burying place exempt from execution.
 68.24.240 Certain cemetery lands exempt from taxes, etc.—1901 c 147.

68.24.010 Right to acquire property. Cemetery authorities may take by purchase, donation or devise, property consisting of lands, mausoleums, crematories, and columbariums, or other property within which the interment of the dead may be authorized by law. [1943 c 247 § 61; Rem. Supp. 1943 § 3778–61.]

Cemetery sites on state lands: RCW 79.01.096.

68.24.020 Surveys and maps. Every cemetery authority, from time to time as its property may be required for cemetery purposes, shall:

(1) In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks, or other subdivisions; make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers.

(2) In case of a mausoleum, or columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names or numbers. [1943 c 247 § 62; Rem. Supp. 1943 § 3778–62.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.030 Declaration of dedication and maps—Filing. The cemetery authority shall file the map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The cemetery authority shall also file for record in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to cemetery purposes. [1943 c 247 § 63; Rem. Supp. 1943 § 3778–63.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

County auditor: Chapter 36.22 RCW.

County auditor fees, generally: RCW 36.18.010.

68.24.040 Dedication, when complete. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes

and thereafter the property shall be held, occupied, and used exclusively for a cemetery and for cemetery purposes. [1943 c 247 § 64; Rem. Supp. 1943 § 3778-64.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.050 Constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to cemetery purposes. [1943 c 247 § 66; Rem. Supp. 1943 § 3778-66.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.060 Maps and plats—Amendment. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person. [1943 c 247 § 65; Rem. Supp. 1943 § 3778-65.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.070 Permanency of dedication. After property is dedicated to cemetery purposes pursuant to RCW 68.24.010 through 68.24.060, neither the dedication, nor the title of a plot owner, shall be affected by the dissolution of the cemetery authority, by nonuser on its part, by alienation of the property, by any incumbrances, by sale under execution, or otherwise except as provided in *this act. [1943 c 247 § 67; Rem. Supp. 1943 § 3778-67.]

Reviser's note: *(1) "this act", see note following RCW 68.04.020.

(2) This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.080 Rule against perpetuities, etc., inapplicable. Dedication to cemetery purposes pursuant to *this act is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to, and for the benefit of, the general public. [1943 c 247 § 68; Rem. Supp. 1943 § 3778-68.]

Reviser's note: *(1) "this act", see note following RCW 68.04.020.

(2) This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.090 Removal of dedication—Procedure. Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed.

(2) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains. [1943 c 247 § 76; Rem. Supp. 1943 § 3778-76.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.100 Notice of hearing. The notice of hearing provided in RCW 68.24.090 shall be given by publication once a week for at least three consecutive weeks in a newspaper of general circulation in the county where said cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. Said notice shall:

(1) Describe the portion of the cemetery property sought to be removed from dedication.

(2) State that all remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(3) Specify the time and place of the hearing. [1943 c 247 § 77; Rem. Supp. 1943 § 3778-77.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.110 Sale of plots. After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots subject to such rules and regulations as may be then in effect or thereafter adopted by the cemetery authority, and subject to such other and further limitations, conditions and restrictions as may be inserted in or made a part of the declaration of dedication by reference, or included in the instrument of conveyance of such plot. [1943 c 247 § 70; Rem. Supp. 1943 § 3778-70. FORMER PART OF SECTION: 1943 c 247 § 72 now codified as RCW 68.24.115.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.115 Execution of conveyances. All conveyances made by a cemetery authority shall be signed by such officer or officers as are authorized by the cemetery authority. [1943 c 247 § 72; Rem. Supp. 1943 § 3778-72. Formerly RCW 68.24.110, part.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.120 Plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law. [1943 c 247 § 71; Rem. Supp. 1943 § 3778-71.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.130 Sales for resale prohibited—Penalty. It shall be unlawful for any person, firm or corporation to sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit. Each person violating this section shall be guilty

of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 73; Rem. Supp. 1943 § 3778-73.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.140 Commission on sales prohibited—Penalty. It shall be unlawful for a cemetery authority to pay or offer to pay to any person, firm or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the cemetery authority for such purpose. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 74; Rem. Supp. 1943 § 3778-74.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.150 Employment of "runners" prohibited—Penalty. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in RCW 68.24.140, any commission or bonus or rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory or cemetery, is guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 75; Rem. Supp. 1943 § 3778-75.]

Reviser's note: This section does not apply to certain cemeteries. See RCW 68.48.070.

68.24.160 Liens subordinate to dedication. All mortgages, deeds of trust and other liens of any nature, hereafter contracted, placed or incurred upon property which has been and was at the time of the creation or placing of the lien, dedicated as a cemetery pursuant to this part, or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed or lien, dedicated to cemetery purposes pursuant to this part, shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication and any and all sales made upon foreclosure are subject and subordinate to the dedication for cemetery purposes. [1943 c 247 § 60; Rem. Supp. 1943 § 3778-60.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.24.170 Record of ownership and transfers. A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery. No transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete or effective until recorded on the books of the cemetery authority. [1943 c 247 § 40; Rem. Supp. 1943 § 3778-40. FORMER PART OF SECTION: 1943 c 247 § 41 now codified as RCW 68.24.175.]

68.24.175 Inspection of records. The records shall be open to inspection during the customary office hours of

the cemetery. [1943 c 247 § 41; Rem. Supp. 1943 § 3778-41. Formerly RCW 68.24.170, part.]

68.24.180 Opening of roads, railroads through cemetery—Consent required—Exception. After dedication pursuant to *this act, and as long as the property remains dedicated to cemetery purposes, no railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility shall be laid out, through, over, or across any part of it without the consent of the cemetery authority owning and operating it, or of not less than two-thirds of the owners of interment plots: *Provided*, That so long as the action is commenced prior to March 31, 1961, the Washington state **highway commission may condemn for state highway purposes for Primary State Highway No. 14 in the vicinity of Gig Harbor land in any burial ground or cemetery in the following cases: (1) Where no organized or known authority is in charge of any such cemetery, or (2) where the necessary consent cannot be obtained and the court shall find that considerations of highway safety necessitate the taking of such land. Any judgment entered in such condemnation proceedings shall provide and require that before any entry is made on the land condemned for the purpose of construction or for the use of the same for state highway purposes, the state shall, at its own expense, remove or cause to be removed, from such land any bodies buried therein and suitably reinter them elsewhere to the satisfaction of relatives, if they can be found. [1959 c 217 § 1; 1947 c 69 § 1; 1943 c 247 § 69; Rem. Supp. 1947 § 3778-69.]

Reviser's note: *(1) "this act", see note following RCW 68.04.020. (2) This section does not apply to certain cemeteries. See RCW 68.48.070.

** (3) Powers, duties, and functions of the highway commission transferred to department of transportation; see RCW 47.01.031.

68.24.190 Opening road through cemetery—Penalty. Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement over, through, in, or upon, such part of any inclosure as may be used for the burial of the dead, without authority of law or the consent of the owner thereof, shall be guilty of a misdemeanor. [1909 c 249 § 241; RRS § 2493.]

68.24.220 Burying place exempt from execution. Whenever any part of *such burying ground shall have been designated and appropriated by the proprietors thereof as the burying place of any particular person or family, the same shall not be liable to be taken or disposed of by any warrant or execution, for any tax or debt whatever; nor shall the same be liable to be sold to satisfy the demands of creditors whenever the estate of such owner shall be insolvent. [1857 p 28 § 2; RRS § 3760.]

***Reviser's note:** The phrase "such burying ground" appears in 1856-57 p 28 which act provided for the creation of corporations for the purpose of establishing a burying ground or place of sepulture.

Cemetery property exempt from taxation: RCW 84.36.020.

68.24.240 Certain cemetery lands exempt from taxes, etc.—1901 c 147. Upon compliance with the requirements of *this act said lands shall forever be exempt from taxation, judgment and other liens and executions. [1901 c 147 § 4; RRS § 3763.]

***Reviser's note:** "this act" appears in 1901 c 147 the remaining sections of which act were repealed by 1943 c 247 § 148. These sections read as follows:

"Section 1. Any person owning any land, exclusive of encumbrances of any kind, situate two miles outside of the corporate limits of any incorporated city or town, may have the same reserved exclusively for burial and cemetery purposes by complying with the terms of this act, provided said lands so sought to be reserved shall not exceed in area one acre.

Sec. 2. Such person or persons shall cause such land to be surveyed and platted.

Sec. 3. A deed of dedication of said tract for burial and cemetery purposes with a copy of said plat shall be filed with the county auditor of the county in which said lands are situated and the title thereto shall be and remain in the owner, his heirs and assigns, subject to the trust aforesaid."

Property taxes, exemptions: RCW 84.36.020.

Chapter 68.28

MAUSOLEUMS AND COLUMBARIUMS

Sections	
68.28.010	Sections applicable to mausoleums, columbariums, etc.
68.28.020	Buildings converted to use as a place of interment.
68.28.030	Standards of construction.
68.28.040	Fireproof construction.
68.28.050	Ordinances and specifications to be complied with.
68.28.060	Improper construction a nuisance—Penalty.
68.28.065	Court to fix costs.
68.28.070	Construction in compliance with existing laws.

68.28.010 Sections applicable to mausoleums, columbariums, etc. RCW 68.28.020 through 68.28.070, 68.20.080, 68.20.090, 68.48.040 and 68.48.060, apply to all buildings, mausoleums and columbariums used or intended to be used for the interment of the remains of fifteen or more persons whether erected under or above the surface of the earth where any portion of the building is exposed to view or, when interment is completed, is less than three feet below the surface of the earth and covered by earth. [1943 c 247 § 134; Rem. Supp. 1943 § 3778–134.]

68.28.020 Buildings converted to use as a place of interment. A building not erected for, or which is not used as, a place of interment of human remains which is converted or altered for such use is subject to *this act. [1943 c 247 § 135; Rem. Supp. 1943 § 3778–135.]

***Reviser's note:** "this act", see note following RCW 68.04.020.

68.28.030 Standards of construction. No building or structure intended to be used for the interment of human remains shall be constructed, and a building not used for the interment of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will insure its durability and permanence as dictated and determined at the

time by modern mausoleum construction and engineering science. [1943 c 247 § 136; Rem. Supp. 1943 § 3778–136.]

68.28.040 Fireproof construction. All mausoleums or columbariums hereafter constructed shall be of class A fireproof construction. [1943 c 247 § 137; Rem. Supp. 1943 § 3778–137.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.28.050 Ordinances and specifications to be complied with. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing class A construction, the provisions of the local ordinances and specifications shall not be violated. [1943 c 247 § 138; Rem. Supp. 1943 § 3778–138.]

68.28.060 Improper construction a nuisance—Penalty. Every owner or operator of a mausoleum or columbarium erected in violation of *this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case. [1943 c 247 § 140; Rem. Supp. 1943 § 3778–140.]

***Reviser's note:** "this act", see note following RCW 68.04.020.

68.28.065 Court to fix costs. The costs, expenses and disbursements shall be fixed by the court having jurisdiction of the case. [1943 c 247 § 141; Rem. Supp. 1943 § 3778–141.]

68.28.070 Construction in compliance with existing laws. The penalties of *this act shall not apply as to any building which, at the time of construction was constructed in compliance with the laws then existing, if its use is not in violation of the laws for the protection of public health. [1943 c 247 § 142; Rem. Supp. 1943 § 3778–142.]

***Reviser's note:** "this act", see note following RCW 68.04.020.

Chapter 68.32

TITLE AND RIGHTS TO CEMETERY PLOTS

Sections	
68.32.010	Presumption as to title.
68.32.020	Vested right of spouse.
68.32.030	Vested right—Termination.
68.32.040	Descent of title to plot.
68.32.050	Affidavit as authorization.
68.32.060	Family plots—Alienability.
68.32.070	Joint tenants—Vested rights.
68.32.080	Joint tenants—Survivorship.
68.32.090	Joint tenants—Identification.
68.32.100	Co-owners may designate representative.
68.32.110	Order of interment—General.
68.32.120	Order of interment, when no parent or child survives.
68.32.130	Waiver of right of interment.
68.32.140	Termination of vested right by waiver.
68.32.150	Limitations on vested rights.
68.32.160	Conveyance of plot to cemetery authority, effect.

68.32.170 Exemption from inheritance tax.

Reviser's note: This chapter does not apply to certain cemeteries. See RCW 68.48.070.

68.32.010 Presumption as to title. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance. [1943 c 247 § 88; Rem. Supp. 1943 § 3778-88.]

68.32.020 Vested right of spouse. The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner. [1943 c 247 § 89; Rem. Supp. 1943 § 3778-89.]

68.32.030 Vested right—Termination. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree. [1943 c 247 § 90; Rem. Supp. 1943 § 3778-90.]

68.32.040 Descent of title to plot. If no interment is made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner, or if all remains previously interred are lawfully removed, upon the death of the owner, unless the owner has disposed of the plot either by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the plot descends to the surviving spouse or, if there is no surviving spouse, to the heirs at law of the owner subject to the rights of interment of the decedent. [1979 c 21 § 15; 1943 c 247 § 91; Rem. Supp. 1943 § 3778-91.]

68.32.050 Affidavit as authorization. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to RCW 68.32.010 through 68.32.040, is complete authorization to the cemetery authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it. [1943 c 247 § 93; Rem. Supp. 1943 § 3778-93.]

68.32.060 Family plots—Alienability. Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and both the owner and the surviving spouse, if any, die with children then living without making disposition of the plot either by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot shall thereafter be held as a family plot and shall be subject to alienation only upon agreement of the children of the owner living at the time

of said alienation. [1979 c 21 § 16; 1943 c 247 § 98; Rem. Supp. 1943 § 3778-98.]

68.32.070 Joint tenants—Vested rights. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed. [1943 c 247 § 94; Rem. Supp. 1943 § 3778-94.]

68.32.080 Joint tenants—Survivorship. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant. [1943 c 247 § 95; Rem. Supp. 1943 § 3778-95.]

Joint tenants, simultaneous death: RCW 11.05.030.

68.32.090 Joint tenants—Identification. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the cemetery authority operating the cemetery in which the plot is located, is complete authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest. [1943 c 247 § 96; Rem. Supp. 1943 § 3778-96.]

68.32.100 Co-owners may designate representative. When there are several owners of a plot, or of rights of interment in it, they may designate one or more persons to represent the plot and file written notice of designation with the cemetery authority. In the absence of such notice or of written objection to its so doing, the cemetery authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot. [1943 c 247 § 97; Rem. Supp. 1943 § 3778-97.]

68.32.110 Order of interment—General. In a family plot one grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot. [1943 c 247 § 99; Rem. Supp. 1943 § 3778-99.]

68.32.120 Order of interment, when no parent or child survives. If no parents or child survives, the right of interment goes in the order of death first, to the spouse of any child of the record owner, and second, in the order of death to the next heirs at law of the owner or the spouse of any heir at law. [1943 c 247 § 100; Rem. Supp. 1943 § 3778-100.]

68.32.130 Waiver of right of interment. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased

owner; and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot. [1943 c 247 § 101; Rem. Supp. 1943 § 3778-101.]

68.32.140 Termination of vested right by waiver. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom vested. [1943 c 247 § 102; Rem. Supp. 1943 § 3778-102.]

68.32.150 Limitations on vested rights. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space is located. [1943 c 247 § 103; Rem. Supp. 1943 § 3778-103.]

68.32.160 Conveyance of plot to cemetery authority, effect. A cemetery authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise. [1943 c 247 § 104; Rem. Supp. 1943 § 3778-104.]

68.32.170 Exemption from inheritance tax. Cemetery property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes. [1943 c 247 § 92; Rem. Supp. 1943 § 3778-92.]

Chapter 68.36 ABANDONED LOTS

Sections

68.36.010	Sale of abandoned space—Presumption of abandonment.
68.36.020	Notice—Requisites—Limitation on placing.
68.36.030	Petition for order of abandonment—Notice and hearing.
68.36.040	Service of notice.
68.36.050	Hearing—Order—Attorney's fee.
68.36.060	Contract for care before adjudication.
68.36.070	Contract for care within one year after adjudication.
68.36.080	Sale after one year.
68.36.090	Disposition of proceeds.
68.36.100	Petition may cover several lots.

68.36.010 Sale of abandoned space—Presumption of abandonment. The ownership of or right in or to unoccupied cemetery space in this state shall, upon abandonment, be subject to forfeiture and sale by the person, association, corporation or municipality having ownership or management of the cemetery containing such unoccupied cemetery space, for the purpose of providing for *perpetual care. The continued failure by an owner to maintain or care for an unoccupied cemetery lot, unoccupied part of lot, unoccupied lots or parts of lots for a period of five years shall create and establish a presumption that the same has been abandoned. [1943 c 247 § 78; Rem. Supp. 1943 § 3778-78.]

***Reviser's note:** The term "perpetual care" referred to herein originally appeared throughout this chapter and chapters 68.40 and 68.44 RCW. The legislature in 1953 c 290 amended most sections in these chapters to read "endowment care". 1953 c 290 § 24 provides that it is a misdemeanor for any cemetery authority, cemetery broker, etc., to represent that any fund set up for maintaining care is perpetual. See RCW 68.40.085.

68.36.020 Notice—Requisites—Limitation on placing. Before such five year period shall commence to run, the owner or manager of the cemetery shall place upon and during such five year period shall maintain upon such unoccupied cemetery space a suitable notice, setting forth the date the notice is placed thereon and stating that such unoccupied space is subject to forfeiture and sale by the owner or manager of the cemetery to provide for *perpetual care, if the owner of such unoccupied space fails during the next five years following the date of the notice to maintain or care for the same or unless the owner of such unoccupied space contracts for the *perpetual care of the same: *Provided, however,* That such a notice cannot be placed on the unoccupied space in any cemetery lot until twenty years have elapsed since the last interment in any such lot of a member of the immediate family of the record owner. Members of the immediate family shall be construed to include surviving spouse, children, parents, and brothers and sisters. [1943 c 247 § 79; Rem. Supp. 1943 § 3778-79.]

***Reviser's note:** "perpetual care", see note following RCW 68.36.010.

68.36.030 Petition for order of abandonment—Notice and hearing. After such five year period, the owner or manager of the cemetery may file in the office of the county clerk for the county in which the cemetery is located a verified petition, setting forth its ownership or management of the cemetery, the facts relating to the continued failure by the owner for a period of five consecutive years to maintain or care for such cemetery lot, part of lot, lots or parts of lots and such facts relating to the ownership thereof as petitioner may have, and asking for an order of the superior court for such county, adjudging the lot, part of lot, lots or parts of lots to have been abandoned.

At the time of filing such petition, the owner or manager of the cemetery shall apply for and the superior court for such county shall fix a time for the hearing of the petition not less than sixty days nor more than ninety days from the time of the application. Not less than sixty days before the time fixed for the hearing of the petition, notice of the hearing and the nature and object of the same shall be given to the owner of such unoccupied space, as herein provided. [1943 c 247 § 80; Rem. Supp. 1943 § 3778-80.]

68.36.040 Service of notice. The notice may be served personally upon the owner, or may be given by the mailing of the notice by registered mail to the owner to his last known address and by publishing the notice three times in a legal newspaper published in the county in which the cemetery is located, and if there be no legal

newspaper in the county, then in a legal newspaper published in an adjoining county, and if there be no legal newspaper in an adjoining county, then in a legal newspaper published at the capital of the state. In the event that the whereabouts of the owner is unknown, or if the owner be unknown, then the notice may be given to such owner, unknown owner or unknown claimant, and all other persons or parties claiming any right, title or interest therein, by publishing the notice three times in a legal newspaper as aforesaid. The affidavit of the owner or manager of the cemetery involved to the effect that such owner or claimant is unknown to him and that he exercised diligence in attempting to locate such unknown parties shall, if filed in the proceeding, be conclusive to that effect. [1943 c 247 § 81; Rem. Supp. 1943 § 3778-81.]

68.36.050 Hearing—Order—Attorney's fee. Thereupon, such owner or claimant may appear and make answer to the allegations of said petition, and in case of his failure so to do prior to the day fixed for hearing, his default shall be entered and it shall then be the duty of the superior court for such county to immediately enter an order adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation or municipality having ownership or management of the cemetery containing the same. In the event the owner or claimant shall appear and file his answer prior to the day fixed for the hearing, the presumption of abandonment shall no longer exist, and on the day fixed for the hearing of said petition or on any subsequent day to which the hearing of the cause is adjourned, the allegations and proof of the parties shall be presented to the court and if the court shall determine therefrom that there has been a continued failure to maintain or care for such unoccupied space for a period of five consecutive years preceding the filing of said petition, an order shall be entered accordingly adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation or municipality having ownership of the cemetery containing the same. Upon any adjudication of abandonment, the court shall fix such sum as it shall deem reasonable as an attorney's fee for petitioner's attorney for each lot, part of lot, lots or parts of lots adjudged to have been abandoned in such proceedings. [1943 c 247 § 82; Rem. Supp. 1943 § 3778-82.]

68.36.060 Contract for care before adjudication. If at any time before the adjudication of abandonment the owner of an unoccupied space contracts with the owner or manager of the cemetery for the endowment care of the space, the court shall dismiss the proceedings as to such unoccupied space. [1953 c 290 § 1; 1943 c 247 § 83; Rem. Supp. 1943 § 3778-83.]

68.36.070 Contract for care within one year after adjudication. If at any time within one year after the adjudication of abandonment, the former owner of the unoccupied space shall contract for its endowment care, and reimburse the owner or manager of the cemetery for

the expense of the proceedings, including attorney's fees, the space shall not be sold and the order adjudging it to have been abandoned shall be vacated upon petition of the former owner. [1953 c 290 § 2; 1943 c 247 § 84; Rem. Supp. 1943 § 3778-84.]

68.36.080 Sale after one year. One year after the entry of the order adjudging such lot, part of lot, lots or parts of lots to have been abandoned, the owner or manager of the cemetery in which the same is located shall have the power to sell the same, in whole or in part, at public or private sale, and convey by deed good, clear and sufficient title thereto. [1943 c 247 § 85; Rem. Supp. 1943 § 3778-85.]

68.36.090 Disposition of proceeds. Not more than twenty percent of the funds realized from the sale of abandoned space shall be used to defray the expenses of the proceedings to abandon, and the improving of it in such manner as to place it in condition for care, and the balance shall be placed immediately in a trust fund or shall be immediately transferred to a nonprofit organization to be used exclusively for the endowment care and maintenance of the cemetery. [1953 c 290 § 3; 1943 c 247 § 86; Rem. Supp. 1943 § 3778-86.]

68.36.100 Petition may cover several lots. In any one petition for abandonment, a petitioner may, irrespective of diversity of ownership, include in any such petition as many lots or parts of lots as come within the provisions of *this act. The petition for abandonment shall be entitled: "In the Matter of the Abandonment, Forfeiture and Sale of Unoccupied and Uncared for Space located in ----- Cemetery." [1943 c 247 § 87; Rem. Supp. 1943 § 3778-87.]

*Reviser's note: "this act", see note following RCW 68.04.020.

Chapter 68.40

ENDOWMENT AND NONENDOWMENT CARE

Sections	
68.40.010	Endowment care cemetery defined—Deposit required.
68.40.020	Nonendowment care section.
68.40.030	Endowment care cemetery—Identifying sign.
68.40.040	Endowment care fiscal report.
68.40.050	Annual revision of report.
68.40.060	May accept property in trust—Application of proceeds.
68.40.070	Nonendowment care cemetery defined.
68.40.080	Nonendowment care cemetery—Identifying sign.
68.40.085	Representing fund as perpetual—Penalty.
68.40.090	Penalty.
68.40.100	Only nonendowment care cemeteries now in existence are authorized.

Reviser's note: This chapter does not apply to certain cemeteries. See RCW 68.48.070.

68.40.010 Endowment care cemetery defined—Deposit required. An endowment care cemetery is one which deposits in its endowment care fund not less than the following amounts for plots sold: Ten percent of the gross sales price, with a minimum of ten dollars for each

adult grave; five dollars for each niche; and thirty dollars for each crypt.

The deposits shall be made not later than the twentieth day of the month following the final payment on the sale price.

Any endowment care cemetery hereafter established shall also have deposited in its endowment care fund the additional sum of twenty-five thousand dollars before disposing of any plot or making any sale thereof: *Provided*, That the requirement of an additional deposit of twenty-five thousand dollars shall not apply to any cemetery in existence on January 1, 1961, having an area not exceeding ten acres. [1961 c 133 § 2; 1953 c 290 § 4; 1943 c 247 § 118; Rem. Supp. 1943 § 3778-118.]

68.40.020 Nonendowment care section. An endowment care cemetery may contain a small section which may be sold without endowment care, if the section is separately set off from the remainder of the cemetery and if signs are kept prominently placed around the section designating it as a "nonendowment care section," in lettering equivalent to a minimum of forty-eight point black type. There shall be printed or stamped at the head of all contracts and certificates of ownership or deeds referring to plots in the section, the phrase "non-endowment care" in lettering equivalent to a minimum of ten point number two black type: *Provided*, That no nonendowment care section may be established after June 7, 1979. [1979 c 21 § 17; 1953 c 290 § 5; 1943 c 247 § 120; Rem. Supp. 1943 § 3778-120.]

68.40.030 Endowment care cemetery—Identifying sign. An endowment care cemetery shall post in a conspicuous place in the office or offices where sales are conducted and in a conspicuous place at or near the entrance of the cemetery or its administration building, and readily accessible to the public, a legible sign with the following phrase: "This is an endowment care property." [1953 c 290 § 6; 1943 c 247 § 121; Rem. Supp. 1943 § 3778-121.]

68.40.040 Endowment care fiscal report. An endowment care cemetery shall file in its principal office a written report which shall be available to any plot owner, and which shall state the amount of the principal of the endowment care fund and the total amount invested in lawful investments, and the amount of cash on hand, which shall show the true financial condition of the trust. [1953 c 290 § 7; 1943 c 247 § 122; Rem. Supp. 1943 § 3778-122.]

68.40.050 Annual revision of report. All the information appearing on the report filed in the cemetery office shall be revised annually and verified by the president and secretary, or two officers authorized by the cemetery authority. [1943 c 247 § 124; Rem. Supp. 1943 § 3778-124.]

68.40.060 May accept property in trust—Application of proceeds. The cemetery authority of an endowment care cemetery may accept any property bequeathed, granted, or given to it in trust and may apply the principal, or proceeds, or income to any or all of the following purposes:

(1) Improvement or embellishment of all or any part of the cemetery or any lot in it;

(2) Erection, renewal, repair, or preservation of any monument, fence, building, or other structure in the cemetery;

(3) Planting or cultivation of trees, shrubs, or plants in or around any part of the cemetery;

(4) Special care or ornamenting of any part of any plot, section, or building in the cemetery; and

(5) Any purpose or use consistent with the purpose for which the cemetery was established or is maintained. [1953 c 290 § 8; 1943 c 247 § 129; Rem. Supp. 1943 § 3778-129.]

68.40.070 Nonendowment care cemetery defined. A nonendowment care cemetery is one that does not deposit in an endowment care fund the minimum required of an endowment care cemetery. [1953 c 290 § 9; 1943 c 247 § 119; Rem. Supp. 1943 § 3778-119.]

68.40.080 Nonendowment care cemetery—Identifying sign. A nonendowment care cemetery shall post in a conspicuous place in the office or offices where sales are conducted and in a conspicuous place at or near the entrance of the cemetery or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is not an endowment care property." This phrase likewise shall be printed or stamped at the head of all contracts, certificates of ownership, or deeds. [1953 c 290 § 10; 1943 c 247 § 123; Rem. Supp. 1943 § 3778-123.]

68.40.085 Representing fund as perpetual—Penalty. It is a misdemeanor for any cemetery authority, its officers, employees, or agents, or a cemetery broker or salesman to represent that an endowment care fund, or any other fund set up for maintaining care, is perpetual. [1953 c 290 § 24.]

68.40.090 Penalty. Any person, partnership, corporation, association, or his or its agents or representatives who shall violate any of the provisions of RCW 68.40.010 through 68.40.050, 68.40.070, and 68.40.080, or make any false statement appearing on said sign, contract, agreement, receipt, statement, literature or other publication shall be guilty of a misdemeanor. [1943 c 247 § 125; Rem. Supp. 1943 § 3778-125.]

68.40.100 Only nonendowment care cemeteries now in existence are authorized. After June 7, 1979, no nonendowment care cemetery may be established. However, any nonendowment care cemetery in existence on June 7, 1979, may continue to operate as a nonendowment care cemetery. [1979 c 21 § 18.]

Chapter 68.44
ENDOWMENT CARE FUND

Sections

68.44.010	Fund authorized—Investments.
68.44.020	Use and care of funds.
68.44.030	Authorized investments.
68.44.060	Unauthorized loans—Penalty.
68.44.070	Purpose of endowment care—Validity.
68.44.080	Plans for care—Source of fund.
68.44.090	Covenant to care for cemetery.
68.44.100	Agreement by owner to care for plot.
68.44.110	Trustees of fund.
68.44.120	Directors as trustees—Secretary.
68.44.130	Bank or trust company as trustee.
68.44.140	Compensation of trustees.
68.44.150	Annual report of condition of fund.
68.44.160	Contributions.
68.44.170	Use of income from fund.

Reviser's note: This chapter does not apply to certain cemeteries. See RCW 68.48.070.

68.44.010 Fund authorized—Investments. Any cemetery authority may place its cemetery under endowment care, and establish, maintain, and operate an irreducible endowment care fund. Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the funds in the proportion that each contributed to the sum invested. The funds may be held in the name of the cemetery authority or its directors or in the name of the trustees appointed by the cemetery authority. [1953 c 290 § 11; 1943 c 247 § 105; Rem. Supp. 1943 § 3778–105.]

68.44.020 Use and care of funds. Endowment care funds shall not be used for any purpose other than to provide, through income only, for the endowment care stipulated in the instrument by which the fund was established, and shall be kept separate and distinct from all other funds. The principal shall forever remain irreducible and inviolable. [1953 c 290 § 12. Prior: (i) 1943 c 247 § 106; Rem. Supp. 1943 § 3778–106. (ii) 1943 c 247 § 126; Rem. Supp. 1943 § 3778–126.]

68.44.030 Authorized investments. Endowment care funds shall be kept invested in accordance with the provisions of RCW 30.24.020 subject to the following restrictions:

(1) No officer or director of the cemetery authority, trustee of the endowment care or special care funds, or spouse, sibling, parent, grandparent, or issue of such officer, director, or trustee, shall borrow any of such funds for himself, directly or indirectly.

(2) No funds shall be loaned to the cemetery authority, its agents, or employees, or to any corporation, partnership, or other business entity in which the cemetery authority has any ownership interest.

(3) No funds shall be invested with persons or business entities operating in a business field directly related to cemeteries, including, but not limited to, mortuaries, monument production and sales, florists, and rental of funeral facilities.

(4) Notwithstanding any other provisions contained in this section, funds may be invested in any commercial

bank, mutual savings bank, or savings and loan association duly chartered and operating under the laws of the United States or statutes of the state of Washington. [1979 c 21 § 19; 1953 c 290 § 13; 1943 c 247 § 127; Rem. Supp. 1943 § 3778–127.]

68.44.060 Unauthorized loans—Penalty. Every director or officer authorizing or consenting to a loan, and the person who receives a loan, in violation of *this article are severally guilty of a misdemeanor. [1943 c 247 § 133; Rem. Supp. 1943 § 3778–133.]

***Reviser's note:** The term "this article" appears in 1943 c 247, the general cemetery act, which was not divided into articles. For the codification of 1943 c 247, see note following RCW 68.04.020.

68.44.070 Purpose of endowment care—Validity. The endowment care and special care funds and all payments or contributions thereto are hereby expressly permitted for charitable and eleemosynary purposes. Endowment care and such contributions are provisions for the discharge of a duty from the persons contributing to the persons interred and to be interred in the cemetery and provisions for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated. No payment, or contribution for general endowment care, is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property. [1953 c 290 § 16. Prior: (i) 1943 c 247 § 130; Rem. Supp. 1943 § 3778–130. (ii) 1943 c 247 § 117; Rem. Supp. 1943 § 3778–117.]

68.44.080 Plans for care—Source of fund. The cemetery authority may from time to time adopt plans for the general care, maintenance, and embellishment of its cemetery, and charge and collect from all purchasers of plots such reasonable sum as it deems will aggregate a fund, the reasonable income from which will provide care, maintenance, and embellishment on an endowment basis. [1953 c 290 § 17; 1943 c 247 § 108; Rem. Supp. 1943 § 3778–108.]

68.44.090 Covenant to care for cemetery. Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or by separate instrument, an agreement to care, in accordance with the plan adopted, for the cemetery and its appurtenances on an endowment basis to the proportionate extent the income received by the cemetery authority from the contribution will permit. [1953 c 290 § 18; 1943 c 247 § 109; Rem. Supp. 1943 § 3778–109.]

68.44.100 Agreement by owner to care for plot. Upon the application of an owner of a plot, and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for endowment care, a cemetery authority may enter into an agreement with him for

the care of his plot and its appurtenances. [1953 c 290 § 19; 1943 c 247 § 110; Rem. Supp. 1943 § 3778-110.]

68.44.110 Trustees of fund. The cemetery authority may appoint a board of not less than three members as trustees for its endowment care fund, who shall hold office subject to the direction of the cemetery authority. [1953 c 290 § 20; 1943 c 247 § 111; Rem. Supp. 1943 § 3778-111.]

68.44.120 Directors as trustees—Secretary. The directors of a cemetery authority may be the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings. The investments of the endowment care fund may be held in the name of the cemetery authority. [1953 c 290 § 21; 1943 c 247 § 112; Rem. Supp. 1943 § 3778-112.]

68.44.130 Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its *perpetual care fund, any cemetery authority may appoint as sole trustee of its *perpetual care fund any bank or trust company qualified to engage in the trust business, and said bank or trust company shall be authorized to receive and accept said fund, including any accumulated perpetual care fund in existence at the time of its appointment. [1943 c 247 § 113; Rem. Supp. 1943 § 3778-113.]

*Reviser's note: "perpetual care fund", see note following RCW 68.36.010.

68.44.140 Compensation of trustees. Compensation to the board of trustees or trustee for services as trustee and other compensation for administration of trust funds shall not exceed in the aggregate the customary fees charged by banks and trust companies for like services. [1979 c 21 § 20; 1943 c 247 § 114; Rem. Supp. 1943 § 3778-114.]

68.44.150 Annual report of condition of fund. The cemetery authority or the persons in whose names the funds are held shall, annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, make and keep on file for seven years a true and correct written report, verified on oath by an officer of the cemetery authority or by the oath of one or more of the trustees, showing the actual financial condition of the funds. [1979 c 21 § 21; 1943 c 247 § 115; Rem. Supp. 1943 § 3778-115.]

68.44.160 Contributions. A cemetery authority which has established an endowment care fund may take and hold, as a part of or incident to the fund, any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund. [1953 c 290 § 22; 1943 c 247 § 116; Rem. Supp. 1943 § 3778-116.]

68.44.170 Use of income from fund. The income from the endowment care fund shall be used solely for

the general care, maintenance, and embellishment of the cemetery, and shall be applied in such manner as the cemetery authority may from time to time determine to be for the best interest of the cemetery. [1953 c 290 § 23; 1943 c 247 § 107; Rem. Supp. 1943 § 3778-107.]

Chapter 68.46

PREARRANGEMENT CONTRACTS

Sections

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68.46.030	Prearrangement trust funds—Deposits—Bond requirements.
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68.46.240	Delaying board action pending administrative proceedings.
68.46.250	Board action against authorities—Hearing location—Decision—Review.
68.46.260	Board action against authorities—Enforcement of orders.

68.46.010 Definitions. Unless the context clearly indicates otherwise, the following terms as used only in this chapter have the meaning given in this section:

(1) "Prearrangement contract" means a contract for purchase of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(2) "Cemetery authority" shall have the same meaning as in RCW 68.04.190, and shall also include any individual, partnership, firm, joint venture, corporation, company, association, or joint [joint] stock company, any of which sells cemetery services or merchandise, unconstructed crypts or niches, or undeveloped graves through a prearrangement contract, but shall not include insurance companies licensed under chapter 48.05 RCW.

(3) "Cemetery merchandise or services" and "merchandise or services" mean those services normally performed by cemetery authorities, including the sale of

monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, interment services, or any one or more of them.

(4) "Prearrangement trust fund" means all funds required to be maintained in one or more funds for the benefit of beneficiaries by either this chapter or by the terms of a prearrangement contract, as herein defined.

(5) "Depository" means a qualified public depository as defined by RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a mutual savings bank as governed by Title 32 RCW, a savings and loan association as governed by Title 33 RCW, and a federal credit union or a federal savings and loan association organized, operated, and governed by any act of congress, in which prearrangement funds are deposited by any cemetery authority.

(6) "Board" means the cemetery board established under chapter 68.05 RCW or its authorized representative.

(7) "Undeveloped grave" means any grave in an area which a cemetery authority has not landscaped and groomed to the extent customary in the cemetery industry in that community. [1979 c 21 § 22; 1975 1st ex.s. c 55 § 1; 1973 1st ex.s. c 68 § 1.]

68.46.020 Prearrangement trust funds—Required. Any cemetery authority selling by prearrangement contracts any merchandise or services shall establish and maintain one or more prearrangement funds for the benefit of beneficiaries of prearrangement contracts. [1973 1st ex.s. c 68 § 2.]

68.46.030 Prearrangement trust funds—Deposits—Bond requirements. (1) A cemetery authority shall deposit in its prearrangement trust account a percentage of all funds collected in payment of each prearrangement contract equal to the greater of:

- (a) Fifty percent of the contract price; or
- (b) The percentage which the total of the wholesale cost of merchandise and the direct cost of services to be provided pursuant to the contract is of the total contract price.

(2) Any cemetery authority which does not file and maintain with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund fifty percent, or greater percentage as determined under subsection (1) of this section, of all moneys received in payment of each prearrangement contract, excluding sales tax and endowment care if such charge is made.

(3) Any cemetery authority which files and maintains with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund each payment as made on the last fifty percent, or greater percentage as determined under subsection (1) of this section, of each prearrangement contract, excluding sales tax and endowment care, if such charge is made.

(4) Each cemetery authority electing to make payments to its prearrangement trust fund pursuant to subsection (3) of this section shall file and maintain with the board a bond, issued by a surety company authorized

to do business in the state, in the amount by which the cemetery authority's contingent liability for refunds pursuant to RCW 68.46.060 exceeds the amount deposited in its prearrangement trust fund. The bond shall run to the state and shall be conditioned that it is for the use and benefit of any person requesting a refund pursuant to RCW 68.46.060 if the cemetery authority does not promptly pay to said person the refund due pursuant to RCW 68.46.060. In addition to any other remedy, every person not promptly receiving the refund due pursuant to RCW 68.46.060 may sue the surety for the refund. The liability of the surety shall not exceed the amount of the bond. Termination or cancellation shall not be effective unless notice is delivered by the surety to the board at least thirty days prior to the date of termination or cancellation. The board shall immediately notify the cemetery authority affected by the termination or cancellation by certified mail, return receipt requested. The cemetery authority shall thereupon obtain another bond or make such other arrangement as may be satisfactory to the board to assure its ability to make refunds pursuant to RCW 68.46.060.

(5) Deposits to the prearrangement trust fund shall be made not later than the twentieth day of each month following receipt of each payment required to be deposited.

(6) Any failure to fund a prearrangement contract as required by this section shall be grounds for revocation of the cemetery authorities' [authority's] prearrangement sales license. [1979 c 21 § 24; 1973 1st ex.s. c 68 § 3.]

68.46.040 Prearrangement trust funds—Deposit with qualified public depository. All prearrangement trust funds shall be deposited in a qualified public depository as defined by RCW 68.46.010. Such savings accounts shall be designated as the prearrangement trust fund of the particular cemetery authority for the benefit of the beneficiaries named in any prearrangement contract. [1973 1st ex.s. c 68 § 4.]

68.46.050 Withdrawals from trust funds. A bank, trust company, or savings and loan association designated as the depository of prearrangement funds shall permit withdrawal by a cemetery authority of all funds deposited under any specific prearrangement contract plus interest accrued thereon, under the following circumstances and conditions:

(1) If the cemetery authority files a verified statement with the depository that the prearrangement merchandise and services covered by a contract have been furnished and delivered in accordance therewith; or

(2) If the cemetery authority files a verified statement that a specific prearrangement contract has been canceled in accordance with its terms. [1973 1st ex.s. c 68 § 5.]

68.46.060 Termination of contract by purchaser or beneficiary. Any purchaser or beneficiary or beneficiaries may, upon written demand of any cemetery authority, demand that any prearrangement contract with such cemetery authority be terminated. In such event,

the cemetery authority shall within thirty days refund to such purchaser or beneficiary or beneficiaries fifty percent of the moneys received less the cost of any merchandise delivered or services performed before the termination. In any case, where, under a prearrangement contract there is more than one beneficiary, no written demand as provided in this section shall be honored by any cemetery authority unless the written demand provided for herein shall bear the signatures of all of such beneficiaries. [1979 c 21 § 25; 1973 1st ex.s. c 68 § 6.]

68.46.070 Involuntary termination of contract—

Refund. Prearrangement contracts shall terminate upon demand of the purchaser of the contract if the cemetery authority shall go out of business, become insolvent or bankrupt, make an assignment for the benefit of creditors, or for any other reason be unable to fulfill the obligations under the contract, in which event, and upon demand by the purchaser or beneficiary or beneficiaries of any prearrangement contract, the depository of the prearrangement funds shall refund to purchasers of prearrangement contracts all funds deposited in accordance with said contracts, unless otherwise ordered by a court of competent jurisdiction. [1979 c 21 § 26; 1973 1st ex.s. c 68 § 7.]

68.46.075 Inactive contracts—Funds transfer—

Obligations. In the event the beneficiary or beneficiaries of a prearrangement contract make no claim within fifty years of the date of the contract for the merchandise and services provided in the prearrangement contract, the funds deposited in the prearrangement trust funds attributable to that contract and the interest on said funds shall be transferred to the cemetery authority's endowment fund to be used for the uses and purposes for which the endowment fund was established. However, the cemetery authority shall remain obligated for merchandise and services, unconstructed crypts or niches, and undeveloped graves under the terms of the prearrangement contract. Claims may be made for merchandise and services, unconstructed crypts or niches, and undeveloped graves on a prearrangement contract after the funds have been transferred to the endowment fund and shall be paid for from the endowment fund income to the extent of the funds attributable to the prearrangement contract. [1979 c 21 § 27.]

68.46.080 Other use of trust funds prohibited. Prearrangement trust funds shall not be used in any way, directly or indirectly, for the benefit of the cemetery authority or any director, officer, agent or employee of any cemetery authority, including, but not limited to any encumbrance, pledge, or other utilization or prearrangement trust funds as collateral or other security. [1973 1st ex.s. c 68 § 8.]

68.46.090 Financial reports—Filing. Any cemetery authority selling prearrangement merchandise or other prearrangement services shall file in its office or offices and with the cemetery board a written report upon forms prepared by the cemetery board which shall state the amount of the principle of the prearrangement

trust fund or funds, the depository of such fund or funds, and cash on hand which is or may be due to such fund as well as such other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually and shall be verified by the president, the secretary or auditor preparing the same, and a certified public accountant in accordance with generally accepted auditing standards. [1977 ex.s. c 351 § 5; 1973 1st ex.s. c 68 § 9.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.46.095 Financial statements—Failure to file.

(1) Each authorized cemetery authority shall within ninety days after the close of its accounting year file with the board a true and accurate statement of its financial condition, transactions, and affairs for the preceding year. The statement shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The board shall suspend or revoke the prearrangement sales license of any cemetery authority which fails to file such a statement when due or after any extension of time which the board has, for good cause, granted. [1979 c 21 § 37.]

68.46.100 Information to be furnished purchaser. Every prearrangement contract shall contain language which informs the purchaser of the prearrangement trust fund and the amount to be deposited in the prearrangement trust fund, which shall not be less than fifty percent of the cash purchase price of the merchandise and services in the contract and shall not include charges for endowment care when included in the purchase price. [1973 1st ex.s. c 68 § 10.]

68.46.110 Compliance required. No cemetery authority shall sell, offer to sell or authorize the sale of cemetery merchandise or services or accept funds in payment of any prearrangement contract, either directly or indirectly, unless such acts are performed in compliance with *this act, and under the authority of a valid, subsisting and unsuspended certificate of authority to operate a cemetery in this state by the Washington state cemetery board. [1973 1st ex.s. c 68 § 11.]

***Reviser's note:** "this act" apparently refers to 1973 1st ex.s. c 68, codified herein as chapter 68.46 RCW and the amendments to RCW 68.05.130–68.05.160, 68.05.180 and 68.05.255 by 1973 1st ex.s. c 68.

68.46.120 Exemptions from chapter. The provisions of this chapter do not apply to any of the following:

(1) To nonprofit cemeteries which are owned or operated by any recognized religious denomination which qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built; or

(2) To any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1979 c 21 § 41; 1977 ex.s. c 351 § 6.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.46.130 Exemptions from chapter granted by board. The cemetery board may grant an exemption from any or all of the requirements of this chapter relating to prearrangement contracts to any cemetery authority which:

- (1) Sells less than twenty prearrangement contracts per year; and
- (2) Deposits one hundred percent of all funds received into a trust fund under RCW 68.46.030, as now or hereafter amended. [1979 c 21 § 43.]

68.46.140 Prearrangement sales license. To apply for a prearrangement sales license, a cemetery authority shall:

- (1) File with the board its request showing:
 - (a) Its name, location, and organization date;
 - (b) The kinds of cemetery business or merchandise it proposes to transact;
 - (c) A statement of its current financial condition, management, and affairs on a form satisfactory to or furnished by the board; and
 - (d) Such other documents, stipulations, or information as the board may reasonably require to evidence compliance with the provisions of this chapter; and
- (2) Deposit with the board the fees required by this chapter to be paid for filing the accompanying documents, and for the prearrangement sales license, if granted. [1979 c 21 § 28.]

68.46.150 Sales licenses—Qualifications. To qualify for and hold a prearrangement sales license a cemetery authority must comply with and qualify according to the provisions of this chapter. [1979 c 21 § 40.]

68.46.160 Contract forms—Filing. No cemetery authority shall use a prearrangement contract without first filing the form of such contract with the board: *Provided*, That the board may order the cemetery authority to cease using any prearrangement contract form which:

- (1) Is in violation of any provision of this chapter;
- (2) Is misleading or deceptive; or
- (3) Is being used in connection with solicitation by false, misleading or deceptive advertising or sales practices.

Use of a prearrangement contract form which is not on file with the board or which the board has ordered the cemetery authority not to use shall be a violation of this chapter. [1979 c 21 § 38.]

68.46.170 Sales licenses—Requirement. No cemetery authority shall enter into prearrangement contracts in this state unless the cemetery authority has obtained a prearrangement sales license issued by the board or its authorized representative and such license is then current and valid. [1979 c 21 § 23.]

68.46.180 Sales licenses—Terms—Fees. All prearrangement sales licenses issued under this chapter shall be valid for one year unless extended by the board or its authorized representative for a maximum of thirty

days, or such larger extension as the board shall allow for good cause shown.

The board shall set and shall collect in advance the fees required for licensing.

All fees so collected shall be remitted by the board to the state treasurer and the funds shall be credited to the cemetery board fund. [1979 c 21 § 29.]

68.46.190 Sales licenses—Grounds for termination. The board or its authorized representative may refuse to renew or may revoke or suspend a cemetery authority's prearrangement sales license, if the cemetery authority:

- (1) Fails to comply with any provision of this chapter or any proper order or regulation of the board;
- (2) Is found by the board to be in such condition that further execution of prearrangement contracts would be hazardous to purchasers or beneficiaries and the people of this state;
- (3) Refuses to be examined, or refuses to submit to examination or to produce its accounts, records, and files for examination by the board when required;
- (4) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued operation hazardous to purchasers, beneficiaries, or the public; or
- (5) Is found by the board to use false, misleading, or deceptive advertisements or sales methods. [1979 c 21 § 30.]

68.46.200 Sales licenses—Notice, procedures for board action. The board or its authorized representative shall give a cemetery authority notice of its intention to suspend, revoke, or refuse to renew a prearrangement sales license, and shall grant the cemetery authority a hearing, in the manner required for contested cases under chapter 34.04 RCW, before the order of suspension, revocation, or refusal may become effective.

No cemetery authority whose prearrangement sales license has been suspended, revoked, or refused shall subsequently be authorized to enter into prearrangement contracts unless the grounds for such suspension, revocation, or refusal in the opinion of the board no longer exist and the cemetery authority is otherwise fully qualified. Any prearrangement sale by an unlicensed cemetery authority shall be voidable by the purchaser who shall be entitled to a full refund. [1979 c 21 § 31.]

68.46.210 Violations—Unfair practices—Other laws applicable. Any person who violates or aids or abets any person in the violation of any of the provisions of this chapter shall be guilty of a gross misdemeanor. A violation shall constitute an unfair practice under chapter 19.86 RCW and shall be grounds for revocation of the certificate of authority under chapter 68.05 RCW or revocation of the prearrangement sales license under this chapter. Retail installment transactions under this chapter shall be governed by chapter 63.14 RCW. The provisions of this chapter shall be cumulative and

nonexclusive and shall not affect any other remedy available at law. [1979 c 21 § 39.]

68.46.220 Board action against authorities—Administrative procedures. (1) The board or its authorized representative may issue and serve upon a cemetery authority a notice of charges if in the opinion of the board or its authorized representative the cemetery authority:

(a) Is engaging in or has engaged in practices likely to endanger the future delivery of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves;

(b) Is violating or has violated any statute of the state of Washington or any rule of the board; or

(c) Is about to do an act prohibited in (1)(a) or (1)(b) of this section when the opinion is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the cemetery authority. The hearing shall be set not earlier than ten nor later than thirty days after service of the notice unless a later date is set by the board or its authorized representative at the request of the cemetery authority.

Unless the cemetery authority appears at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of a cease and desist order. In the event of this consent or if upon the record made at the hearing the board finds that any violation or practice specified in the notice of charges has been established, the board may issue and serve upon the cemetery authority an order to cease and desist from the violation or practice. The order may require the cemetery authority and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the cemetery authority to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after service of the order upon the cemetery authority except that a cease and desist order issued upon consent shall become effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(4) The powers of the board under this section are in addition to the power of the board to refuse to renew or to revoke or suspend a cemetery authority's prearrangement sales license. [1979 c 21 § 32.]

68.46.230 Board action against authorities—Cease and desist orders. Whenever the board or its authorized representative determines that a cemetery authority is in violation of this chapter or that the continuation of acts or practices of the cemetery authority is likely to cause insolvency or substantial dissipation of assets or earnings of the cemetery authority or to otherwise seriously prejudice the interests of the purchasers or beneficiaries of prearrangement contracts, the board, or its authorized representative, may issue a temporary order requiring

the cemetery authority to cease and desist from the violation or practice. The order shall become effective upon service on the cemetery authority and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 68.46.240 or until the board dismisses the charges specified in the notice under RCW 68.46.220 or until the effective date of a cease and desist order issued against the cemetery authority under RCW 68.46.220. [1979 c 21 § 33.]

68.46.240 Delaying board action pending administrative proceedings. Within ten days after a cemetery authority has been served with a temporary cease and desist order, the cemetery authority may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending completion of the administrative proceedings under RCW 68.46.220. [1979 c 21 § 34.]

68.46.250 Board action against authorities—Hearing location—Decision—Review. Any administrative hearing under RCW 68.46.220 may be held at such place as is designated by the board and shall be conducted in accordance with chapter 34.04 RCW.

Within sixty days after the hearing the board shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 68.46.220.

Review of the decision shall be as provided in chapter 34.04 RCW. [1979 c 21 § 35.]

68.46.260 Board action against authorities—Enforcement of orders. The board may apply to the superior court of the county of the principal place of business of the cemetery authority affected for enforcement of any effective and outstanding order issued under RCW 68.46.220 or 68.46.230, and the court shall have jurisdiction to order compliance with the order. [1979 c 21 § 36.]

Chapter 68.48

PENAL AND MISCELLANEOUS PROVISIONS

Sections

68.48.010	Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral.
68.48.020	Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage.
68.48.030	Unlawful damage to graves, markers, shrubs, etc.—Exceptions.
68.48.040	Nonconforming cemetery a nuisance—Penalty—Costs of prosecution.
68.48.050	Requirements as to crematories.
68.48.060	Defendant liable for costs.
68.48.070	Exclusions.
68.48.080	Police authority—Who may exercise.
68.48.090	Forfeiture of office for inattention to duty.

Burial, removal permits required: RCW 70.58.230.

Care of veterans' plot at Olympia: RCW 73.24.020.

68.48.010 Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral. Every person is

guilty of a gross misdemeanor who unlawfully or without right wilfully does any of the following:

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any enclosure for the protection of a cemetery or any property in a cemetery.

(2) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within the limits of a cemetery.

(3) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment. [1943 c 247 § 36; Rem. Supp. 1943 § 3778–36. Cf. 1909 c 249 § 240 and 1856–57 p 28 §§ 4, 5.]

68.48.020 Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage. Any person violating any provision of RCW 68.48.010 is liable, in a civil action by and in the name of the cemetery authority, to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed. [1943 c 247 § 37; Rem. Supp. 1943 § 3778–37.]

68.48.030 Unlawful damage to graves, markers, shrubs, etc.—Exceptions. The provisions of RCW 68.48.010 do not apply to the removal or unavoidable breakage or injury, by a cemetery authority, of any thing placed in or upon any portion of its cemetery in violation of any of the rules or regulations of the cemetery authority, nor to the removal of anything placed in the cemetery by or with the consent of the cemetery authority which has become in a wrecked, unsightly or dilapidated condition. [1943 c 247 § 37; Rem. Supp. 1943 § 3778–37.]

68.48.040 Nonconforming cemetery a nuisance—Penalty—Costs of prosecution. Every person, firm or corporation who is the owner or operator of a cemetery established in violation of *this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case. [1943 c 247 § 145; Rem. Supp. 1943 § 3778–145.]

**Reviser's note: "this act", see note following RCW 68.04.020.*

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.48.050 Requirements as to crematories. No crematory shall hereafter be constructed or established unless the crematory is of fireproof construction and there is in connection therewith a fireproof columbarium, a fireproof mausoleum, a fireproof room for temporary care of cremated remains or a burial park amply equipped at all times for the interment of remains of

bodies cremated at the crematory. Nothing herein contained shall prevent existing crematories from being repaired, altered, or reconstructed. Nothing in *this act shall prohibit the cremation of human remains in existing crematories, nor the temporary storage of cremated remains. [1943 c 247 § 56; Rem. Supp. 1943 § 3778–56.]

**Reviser's note: "this act", see note following RCW 68.04.020.*

Effective date—1943 c 247: See note following RCW 68.20.040.

68.48.060 Defendant liable for costs. Every person who violates any provision of *this act is guilty of a misdemeanor, and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case. [1943 c 247 § 139; Rem. Supp. 1943 § 3778–139.]

**Reviser's note: "this act", see note following RCW 68.04.020.*

Costs, etc., to be fixed by court having jurisdiction: RCW 68.28.065.

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.48.070 Exclusions. The provisions of RCW 68.20.010 through 68.20.040, 68.24.020 through 68.24.150, 68.24.180, and chapters 68.32, 68.40 and 68.44 RCW, relating to private cemeteries, do not apply to any of the following:

(1) Nonprofit cemeteries which are owned or operated by any recognized religious denomination which qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built; or

(2) Any cemetery controlled and operated by a corner, county, city, town, or cemetery district. [1979 c 21 § 42; 1943 c 247 § 146; Rem. Supp. 1943 § 3778–146.]

68.48.080 Police authority—Who may exercise. The sexton, superintendent or other person in charge of a cemetery, and such other persons as the cemetery authority designates have the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he has charge, and within such radius as may be necessary to protect the cemetery property. [1943 c 247 § 55; Rem. Supp. 1943 § 3778–55.]

68.48.090 Forfeiture of office for inattention to duty. The office of any director or officer who acts or permits action contrary to *this act immediately thereupon becomes vacant. [1943 c 247 § 132; Rem. Supp. 1943 § 3778–132.]

**Reviser's note: "this act", see note following RCW 68.04.020.*



Title 69

FOOD, DRUGS, COSMETICS, AND POISONS

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Chapter 69.04

FOOD, DRUG, AND COSMETIC ACT

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Prescriptions by chiropractors: RCW 18.22.185.

Weights and measures, regulation: Chapter 19.92 RCW.

69.04.001 Statement of purpose. This chapter is intended to enact state legislation (1) which safeguards the public health and promotes the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food, drugs, devices, and cosmetics; and (2) which is uniform, as provided in this chapter, with the federal food, drug, and cosmetic act; and with the federal trade commission act, to the extent it expressly outlaws the false advertisement of food, drugs, devices, and cosmetics; and (3) which thus promotes uniformity of such law and its administration and enforcement, in and throughout the United States. [1945 c 257 § 2; Rem. Supp. 1945 § 6163–51.]

Conformity with federal regulations: RCW 69.04.190 and 69.04.200.

69.04.002 Introductory. For the purposes of this chapter, terms shall apply as herein defined unless the context clearly indicates otherwise. [1945 c 257 § 3; Rem. Supp. 1945 § 6163–52.]

69.04.003 "Federal act" defined. The term "federal act" means the federal food, drug, and cosmetic act, approved on June 25, 1938. (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.) [1945 c 257 § 4; Rem. Supp. 1945 § 6163–53.]

69.04.004 "Intrastate commerce". The term "intrastate commerce" means any and all commerce within the state of Washington and subject to the jurisdiction thereof; and includes the operation of any business or service establishment. [1945 c 257 § 5; Rem. Supp. 1945 § 6163–54.]

69.04.005 "Sale". The term "sale" means any and every sale and includes (1) manufacture, processing, packing, canning, bottling, or any other production, preparation, or putting up; (2) exposure, offer, or any other proffer; (3) holding, storing, or any other possessing; (4) dispensing, giving, delivering, serving, or any other supplying; and (5) applying, administering, or any other using. [1945 c 257 § 6; Rem. Supp. 1945 § 6163-55.]

69.04.006 "Director". The term "director" means the director of the department of agriculture of the state of Washington and his duly authorized representatives. [1945 c 257 § 7; Rem. Supp. 1945 § 6163-56.]

Director of agriculture, general duties: Chapter 43.23 RCW.
Supervisor of foods, feeds and drugs: RCW 43.23.080.

69.04.007 "Person". The term "person" includes individual, partnership, corporation, and association. [1945 c 257 § 8; Rem. Supp. 1945 § 6163-57.]

69.04.008 "Food". The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article. [1945 c 257 § 9; Rem. Supp. 1945 § 6163-58.]

69.04.009 "Drugs". The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories. [1945 c 257 § 10; Rem. Supp. 1945 § 6163-59. Prior: 1907 c 211 § 2.]

69.04.010 "Device". The term "device" (except when used in RCW 69.04.016 and in RCW 69.04.040(10), 69.04.270, 69.04.690, and in RCW 69.04.470 as used in the sentence "(as compared with other words, statements, designs, or devices, in the labeling)") means instruments, apparatus, and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals. [1945 c 257 § 11; Rem. Supp. 1945 § 6163-60.]

69.04.011 "Cosmetic". The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of

any such article; except that such term shall not include soap. [1945 c 257 § 12; Rem. Supp. 1945 § 6163-61.]

69.04.012 "Official compendium". The term "official compendium" mean the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them. [1945 c 257 § 13; Rem. Supp. 1945 § 6163-62.]

69.04.013 "Label". The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper. [1945 c 257 § 14; Rem. Supp. 1945 § 6163-63.]

69.04.014 "Immediate container". The term "immediate container" does not include package liners. [1945 c 257 § 15; Rem. Supp. 1945 § 6163-64.]

69.04.015 "Labeling". The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1945 c 257 § 16; Rem. Supp. 1945 § 6163-65.]

Crimes relating to labeling: Chapter 9.16 RCW.

69.04.016 "Misleading labeling or advertisement", how determined. If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. [1945 c 257 § 17; Rem. Supp. 1945 § 6163-66.]

Crimes relating to advertising: Chapter 9.04 RCW.

69.04.017 "Antiseptic" as germicide. The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body. [1945 c 257 § 18; Rem. Supp. 1945 § 6163-67.]

69.04.018 "New drug" defined. The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions: *Provided*, That no drug in use on the *effective date of this chapter shall be regarded as a new drug. [1945 c 257 § 19; Rem. Supp. 1945 § 6163-68.]

*Effective date—1945 c 257: See RCW 69.04.860.

69.04.019 "Advertisement". The term "advertisement" means all representations, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics. [1945 c 257 § 20; Rem. Supp. 1945 § 6163-69.]

69.04.020 "Contaminated with filth". The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations. [1945 c 257 § 21; Rem. Supp. 1945 § 6163-70.]

69.04.021 "Package". The word "package" shall include, and be construed to include, wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. [1963 c 198 § 8.]

69.04.022 "Pesticide chemical". The term "pesticide chemical" means any substance defined as an economic poison and/or agricultural pesticide in Title 15 RCW as now enacted or hereafter amended. [1963 c 198 § 9.]

69.04.023 "Raw agricultural commodity". The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing. [1963 c 198 § 10.]

69.04.024 "Food additive", "safe". (1) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance generally is recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958; through either scientific procedures or experience based on common use in

food) to be unsafe under the conditions of its intended use; except that such term does not include; (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (c) a color additive.

(2) The term "safe" as used in the food additive definition has reference to the health of man or animal. [1963 c 198 § 11.]

69.04.025 "Color additive", "color". (1) The term "color additive" means a material which (a) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and (b) when added or applied to a food is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which the director, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

(3) Nothing in subsection (1) hereof shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest. [1963 c 198 § 12.]

69.04.040 Prohibited acts. The following acts and the causing thereof are hereby prohibited:

(1) The sale in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic in intrastate commerce.

(3) The receipt in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the sale thereof in such commerce for pay or otherwise.

(4) The introduction or delivery for introduction into intrastate commerce of (a) any food in violation of RCW 69.04.350; or (b) any new drug in violation of RCW 69.04.570.

(5) The dissemination within this state, in any manner or by any means or through any medium, of any false advertisement.

(6) The refusal to permit (a) entry and the taking of a sample or specimen or the making of any investigation or examination as authorized by RCW 69.04.780; or (b) access to or copying of any record as authorized by RCW 69.04.810.

(7) The refusal to permit entry or inspection as authorized by RCW 69.04.820.

(8) The removal, mutilation, or violation of an embargo notice as authorized by RCW 69.04.110.

(9) The giving of a guaranty or undertaking in intrastate commerce, referred to in RCW 69.04.080, that is false.

(10) The forging, counterfeiting, simulating, or falsely representing, or without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under RCW 69.04.350.

(11) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a food, drug, device, or cosmetic, or the doing of any other act with respect to a food, drug, device, or cosmetic, or the labeling or advertisement thereof, which results in a violation of this chapter.

(12) The using in intrastate commerce, in the labeling or advertisement of any drug, of any representation or suggestion that an application with respect to such drug is effective under section 505 of the federal act or under RCW 69.04.570, or that such drug complies with the provisions of either such section. [1945 c 257 § 22; Rem. Supp. 1945 § 6163-71. Prior: 1917 c 168 § 1; 1907 c 211 § 1; 1901 c 94 § 1.]

69.04.050 Remedy by injunction. (1) In addition to the remedies hereinafter provided the director is hereby authorized to apply to the superior court of Thurston county for, and such court shall have jurisdiction upon prompt hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of RCW 69.04.040; without proof that an adequate remedy at law does not exist.

(2) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals (a) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (b) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction. [1945 c 257 § 23; Rem. Supp. 1945 § 6163-72.]

Injunctions, generally: Chapter 7.40 RCW.

69.04.060 Criminal penalty for violations. Any person who violates any provision of RCW 69.04.040 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than two hundred dollars; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and fine. [1945 c 257 § 24; Rem. Supp. 1945 § 6163-73. Prior: 1907 c 211 § 12; 1901 c 94 § 11.]

69.04.070 Additional penalty. Notwithstanding the provisions of RCW 69.04.060, in case of a violation of any provision of RCW 69.04.040, with intent to defraud or mislead, the penalty shall be imprisonment for not more than ninety days, or a fine of not more than one thousand dollars, or both such imprisonment and fine. [1945 c 257 § 25; Rem. Supp. 1945 § 6163-74.]

69.04.080 Avoidance of penalty. No person shall be subject to the penalties of RCW 69.04.060:

(1) For having violated RCW 69.04.040(3), if he establishes that he received and sold such article in good faith, unless he refuses on request of the director to furnish the name and address of the person in the state of Washington from whom he received such article and copies of all available documents pertaining to his receipt thereof; or

(2) For having violated RCW 69.04.040(1), (3), or (4), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such article in good faith, to the effect that such article complies with this chapter; or

(3) For having violated RCW 69.04.040(5), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such advertisement in good faith, to the effect that such advertisement complies with this chapter; or

(4) For having violated RCW 69.04.040(9), if he establishes that he gave such guaranty or undertaking in good faith and in reliance on a guaranty or undertaking to him, which guaranty or undertaking was to the same effect and was signed by, and contained the name and address of, a person in the state of Washington. [1945 c 257 § 26; Rem. Supp. 1945 § 6163-75.]

69.04.090 Liability of disseminator of advertisement. No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 69.04.060 by reason of his dissemination of any false advertisement, unless he has refused on the request of the director to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency in the state of Washington, who caused him to disseminate such false advertisement. [1945 c 257 § 27; Rem. Supp. 1945 § 6163-76.]

69.04.100 Condemnation of adulterated or misbranded article. Whenever the director shall find in intrastate commerce an article subject to this chapter which is so adulterated or misbranded that it is unfit or unsafe for human use and its immediate condemnation is required to protect the public health, such article is hereby declared to be a nuisance and the director is hereby authorized forthwith to destroy such article or to render it unsalable for human use. [1945 c 257 § 28; Rem. Supp. 1945 § 6163-77.]

69.04.110 Embargo of articles. Whenever the director shall find, or shall have probable cause to believe, that an article subject to this chapter is in intrastate commerce in violation of this chapter, and that its embargo under this section is required to protect the consuming or purchasing public from injury, or possible injury, he is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate commerce, without permission given under this chapter. But if, after such article has been so embargoed, the director shall find that such article does not involve a violation of this chapter, such embargo shall be forthwith removed. [1975 1st ex.s. c 7 § 25; 1945 c 257 § 29; Rem. Supp. 1945 § 6163-78.]

Purpose of section: See RCW 69.04.398.

69.04.120 Procedure on embargo. When the director has embargoed an article, he shall, forthwith and without delay in no event later than ten days after the affixing of notice of its embargo, petition the superior court for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such article, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such article. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the court finds indicated in the circumstances. [1945 c 257 § 30; Rem. Supp. 1945 § 6163-79.]

69.04.130 Petitions may be consolidated. Two or more petitions under RCW 69.04.120, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1945 c 257 § 31; Rem. Supp. 1945 § 6163-80.]

69.04.140 Claimant entitled to sample. The claimant in any proceeding by petition under RCW 69.04.120 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1945 c 257 § 32; Rem. Supp. 1945 § 6163-81.]

69.04.150 Damages not recoverable if probable cause existed. No state court shall allow the recovery of damages from administrative action for condemnation under RCW 69.04.100 or for embargo under RCW 69.04.110, if the court finds that there was probable cause for such action. [1945 c 257 § 33; Rem. Supp. 1945 § 6163-82.]

69.04.160 Prosecutions. (1) It shall be the duty of each state attorney, county attorney, or city attorney to whom the director reports any violation of this chapter,

or regulations promulgated under it, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law.

(2) Before any violation of this chapter is reported by the director to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views to the director, either orally or in writing, with regard to such contemplated proceeding. [1945 c 257 § 34; Rem. Supp. 1945 § 6163-83.]

69.04.170 Minor infractions. Nothing in this chapter shall be construed as requiring the director to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. [1945 c 257 § 35; Rem. Supp. 1945 § 6163-84.]

69.04.180 Proceedings to be in name of state. All such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the state of Washington. [1945 c 257 § 36; Rem. Supp. 1945 § 6163-85.]

69.04.190 Standards may be prescribed by regulations. Whenever in the judgment of the director such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container. In prescribing any standard of fill of container, consideration shall be given to and due allowance shall be made for product or volume shrinkage or expansion unavoidable in good commercial practice, and need for packing and protective material. In prescribing any standard of quality for any canned fruit or canned vegetable, consideration shall be given to and due allowance shall be made for the differing characteristics of the several varieties thereof. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the director shall, for the purpose of promoting honesty and fair-dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. [1945 c 257 § 37; Rem. Supp. 1945 § 6163-86. Prior: 1917 c 168 § 2.]

69.04.200 Conformance with federal standards. The definitions and standards of identity, the standards of quality and fill of container, and the label requirements prescribed by regulations promulgated under *this section shall conform, insofar as practicable, with those prescribed by regulations promulgated under section 401 of the federal act and to the definitions and standards promulgated under the meat inspection act approved March 4, 1907, as amended. [1945 c 257 § 38; Rem. Supp. 1945 § 6163-87.]

*Reviser's note: The language "this section" appears in 1945 c 257 § 38 but apparently refers to 1945 c 257 § 37 codified as RCW 69.04.190.

69.04.205 Bacon—Packaging at retail to reveal quality and leanness. All packaged bacon other than that packaged in cans shall be offered and exposed for sale and sold, within the state of Washington only at retail in packages which permit the buyer to readily view the quality and degree of leanness of the product. [1971 c 49 § 1.]

69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal. The director of the department of agriculture is hereby authorized to promulgate rules, regulations, and standards for the implementation of RCW 69.04.205 through 69.04.207. If the director has reason to believe that any packaging method, package, or container in use or proposed for use with respect to the marketing of bacon is false or misleading in any particular, or does not meet the requirements of RCW 69.04.205, he may direct that such use be withheld unless the packaging method, package, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the packaging method, package, or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the packaging method, package, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to a court of proper jurisdiction. [1971 c 49 § 2.]

69.04.207 Bacon—Effective date. RCW 69.04.205 through 69.04.207 shall take effect on January 1, 1972. [1971 c 49 § 3.]

69.04.210 Food—Adulteration by poisonous or deleterious substance. A food shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2) (a) If it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive, or (iii) a color additive) which is unsafe within the meaning of RCW 69.04.390, or (b) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, or (c) if it is, or it bears or contains, any food additive which is unsafe within the meaning of RCW 69.04.394: *Provided*, That where a pesticide chemical has been used in or on a raw

agricultural commodity in conformity with an exemption granted or a tolerance prescribed under RCW 69.04.392 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of RCW 69.04.390 and 69.04.394, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or

(3) If it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(4) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) If it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter or which has been fed on the uncooked offal from a slaughterhouse; or

(6) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394. [1963 c 198 § 1; 1945 c 257 § 39; Rem. Supp. 1945 § 6163-88. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.220 Food—Adulteration by abstraction, addition, substitution, etc. A food shall be deemed to be adulterated (1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is. [1945 c 257 § 40; Rem. Supp. 1945 § 6163-89.]

69.04.231 Food—Adulteration by color additive. A food shall be deemed to be adulterated if it is, or it bears or contains a color additive which is unsafe within the meaning of RCW 69.04.396. [1963 c 198 § 5.]

69.04.240 Confectionery—Adulteration. A food shall be deemed to be adulterated if it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, natural gum, and pectin: *Provided*, That this section shall not apply to any confectionery by reason of its containing less than one-half of one percent

by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances. [1945 c 257 § 42; Rem. Supp. 1945 § 6163-91. Prior: 1923 c 36 § 1, part; 1907 c 211 § 3, part.]

69.04.250 Food—Misbranding by false label, etc. A food shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if it is offered for sale under the name of another food; or (3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; or (4) if its container is so made, formed or filled as to be misleading. [1945 c 257 § 43; Rem. Supp. 1945 § 6163-92. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.260 Packaged food—Misbranding. If a food is in package form, it shall be deemed to be misbranded, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 44; Rem. Supp. 1945 § 6163-93.]

69.04.270 Food—Misbranding by lack of prominent label. A food shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 45; Rem. Supp. 1945 § 6163-94.]

69.04.280 Food—Misbranding for nonconformity with standard of identity. If a food purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by RCW 69.04.190, it shall be deemed to be misbranded unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food. [1945 c 257 § 46; Rem. Supp. 1945 § 6163-95.]

69.04.290 Food—Misbranding for nonconformity with standard of quality. If a food purports to be or is represented as a food for which a standard of quality has been prescribed by regulations as provided by RCW 69.04.190, and its quality falls below such standard, it shall be deemed to be misbranded unless its label bears in such manner and form as such regulations specify, a

statement that it falls below such standard. [1945 c 257 § 47; Rem. Supp. 1945 § 6163-96.]

69.04.300 Food—Misbranding for nonconformity with standard of fill. If a food purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations as provided by RCW 69.04.190, and it falls below the standard of fill of container applicable thereto, it shall be deemed to be misbranded unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 48; Rem. Supp. 1945 § 6163-97.]

69.04.310 Food—Misbranding by failure to show usual name and ingredients. If a food is not subject to the provisions of RCW 69.04.280, it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: *Provided*, That, to the extent that compliance with the requirements of clause (2) of this section is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 49; Rem. Supp. 1945 § 6163-98.]

69.04.315 Halibut—Misbranding by failure to show proper name. No person shall label or offer for sale any food fish product designated as halibut, with or without additional descriptive words unless such food fish product is *Hippoglossus Hippoglossus* or *Hippoglossus Stenolepsis*. Any person violating the provisions of this section shall be guilty of misbranding under the provisions of this chapter. [1967 ex.s. c 79 § 1.]

69.04.320 Food—Misbranding by failure to show dietary properties. If a food purports to be or is represented for special dietary uses, it shall be deemed to be misbranded, unless its label bears such information concerning its vitamin, mineral and other dietary properties as is necessary in order to fully inform purchasers as to its value for such uses, as provided by regulations promulgated by the director, such regulations to conform insofar as practicable with regulations under section 403(j) of the federal act. [1945 c 257 § 50; Rem. Supp. 1945 § 6163-99.]

69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc. If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservative, it shall be deemed to be misbranded unless it bears labeling stating that fact: *Provided*, That to the extent that compliance with the requirements of this section is impracticable, exemptions shall be established by regulations promulgated by the director. The provisions of this section and of RCW 69.04.280 and 69.04.310, with respect to artificial coloring,

shall not apply in the case of butter, cheese, or ice cream. [1945 c 257 § 51; Rem. Supp. 1945 § 6163-100.]

69.04.333 Poultry and poultry products—Label to indicate if product frozen. It shall be unlawful for any person to sell at retail or display for sale at retail any poultry and poultry products, including turkey, which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such poultry or poultry product shall be sold unless in such a package or container bearing said label. [1969 ex.s. c 194 § 1.]

Washington wholesome poultry products act: Chapter 16.74 RCW.

69.04.334 Turkeys—Label requirement as to grading. No person shall advertise for sale, sell, offer for sale or hold for sale in intrastate commerce any turkey that does not bear a label. Such label shall be properly displayed on the package if such turkey is prepackaged, or attached to the turkey if not prepackaged. Such label shall, if the turkey has been graded, state the name of the governmental agency, whether federal or state, and the grade. No turkey which has been graded may be labeled as being ungraded. Any advertisement in any media concerning the sale of turkeys shall state or set forth whether a turkey is ungraded or graded and the specific grade if graded. [1969 ex.s. c 194 § 2.]

69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter. The provisions of this chapter shall be applicable to the enforcement of RCW 69.04.333 and 69.04.334 and any person violating the provisions of RCW 69.04.333 and 69.04.334 shall be subject to the applicable civil and criminal penalties for such violations as provided for in this chapter. [1969 ex.s. c 194 § 3.]

69.04.340 Natural vitamin, mineral, or dietary properties need not be shown. Nothing in this chapter shall be construed to require the labeling or advertising to indicate the natural vitamin, natural mineral, or other natural dietary properties of dairy products or other agricultural products when sold as food. [1945 c 257 § 52; Rem. Supp. 1945 § 6163-101.]

69.04.350 Permits to manufacture or process certain foods. Whenever the director finds after investigation that the distribution in intrastate commerce of any class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered intrastate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and

after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into intrastate commerce, any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the director as provided by such regulations. Insofar as practicable such regulations shall conform with, shall specify the conditions prescribed by, and shall remain in effect only so long as those promulgated under section 404(a) of the federal act. [1945 c 257 § 53; Rem. Supp. 1945 § 6163-102.]

69.04.360 Suspension of permit. The director is authorized to suspend immediately upon notice any permit issued under authority of *this section, if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director shall, immediately after prompt hearing and an inspection of the factory or establishment, reinstate such permit, if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. [1945 c 257 § 54; Rem. Supp. 1945 § 6163-103.]

***Reviser's note:** The language "this section" appears in 1945 c 257 § 54 but apparently refers to 1945 c 257 § 53 codified as RCW 69.04.350.

69.04.370 Right of access for inspection. Any officer or employee duly designated by the director shall have access to any factory or establishment, the operator of which holds a permit from the director, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. [1945 c 257 § 55; Rem. Supp. 1945 § 6163-104.]

69.04.380 Food exempt if in transit for completion purposes. Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 56; Rem. Supp. 1945 § 6163-105.]

69.04.385 Food donated to nonprofit organization. (1) A person, including a farmer, processor, distributor, wholesaler, or retailer of food, who in good faith donates an item of food for use or distribution by a nonprofit organization shall not be liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated food, including any liability under this chapter or chapter 15.32 RCW.

(2) Nothing in this section is intended to limit any liability on the part of the donee nonprofit organization accepting food items under subsection (1) of this section.

(3) The department of agriculture shall maintain an information and referral service for persons and organizations that have notified the department of their desire to participate in the food donation program under this section.

(4) Appropriate state and local agencies are authorized to inspect donated food items for wholesomeness and may establish procedures for the handling of the food items. [1979 c 115 § 1.]

69.04.390 Regulations permitting tolerance of harmful matter. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210; but when such substance is so required or cannot be so avoided, the director shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210. In determining the quantity of such added substance to be tolerated in or on different articles of food, the director shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. [1963 c 198 § 2; 1945 c 257 § 57; Rem. Supp. 1945 § 6163-106.]

69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities. (1) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which generally is recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as unsafe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purpose of the application of clause (2) of RCW 69.04.210 unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed pursuant to subsection (2) hereof and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance pursuant to subsection (2) hereof.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw

agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 408 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, setting forth the tolerances for pesticide chemicals in or on any raw agricultural commodity, are hereby adopted as the regulations for tolerances applicable to this chapter: *Provided*, That the director is hereby authorized to adopt by regulation any new or future amendments to such federal regulations for tolerances, including exemption from tolerance and zero tolerances, to the extent necessary to protect the public health. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein tolerances for pesticides, exemptions, and zero tolerances, upon his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such regulation.

(3) In adopting any new or amended tolerances by regulation issued pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the necessity for the production of an adequate, wholesome, and economical food supply; (c) the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (d) the opinion of experts qualified by scientific training and experience to determine the proper tolerance to be allowed for any pesticide chemical. [1975 1st ex.s. c 7 § 26; 1963 c 198 § 3.]

Purpose of section: See RCW 69.04.398.

69.04.394 Regulations permitting tolerance of harmful matter—Food additives. (1) A food additive shall, with respect to any particular use or intended use of such additives, be deemed unsafe for the purpose of the application of clause (2)(c) of RCW 69.04.210, unless:

(a) It and its use or intended use conform to the terms of an exemption granted, pursuant to a regulation under subsection (2) hereof providing for the exemption from the requirements of this section for any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in the director's opinion such exemption is consistent with the public health; or

(b) There is in effect, and it and its use or intended use are in conformity with a regulation issued or effective under subsection (2) hereof prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 409 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the conditions under which such food additive may be safely used, are hereby adopted as the regulations applicable to this chapter: *Provided*, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe the conditions under which a food additive may be safely used and exemptions where such food additive is to be used solely for investigational purposes; either upon his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect of such additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and (d) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data. [1975 1st ex.s. c 7 § 27; 1963 c 198 § 4.]

Purpose of section: See RCW 69.04.398.

69.04.396 Regulations permitting tolerance of harmful matter—Color additives. (1) A color additive shall, with respect to any particular use (for which it is being used or intended to be used or is represented as suitable) in or on food, be deemed unsafe for the purpose of the application of RCW 69.04.231, unless:

(a) There is in effect, and such color additive and such use are in conformity with, a regulation issued under this section listing such additive for such use, including any provision of such regulation prescribing the

conditions under which such additive may be safely used;

(b) Such additive and such use thereof conform to the terms of an exemption for experimental use which is in effect pursuant to regulation under this section.

While there are in effect regulations under this section relating to a color additive or an exemption with respect to such additive a food shall not, by reason of bearing or containing such additive in all respects in accordance with such regulations or such exemption, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 706 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the use or limited use of such color additive, are hereby adopted as the regulations applicable to this chapter: *Provided*, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein the conditions under which a color additive may be safely used including exemptions for experimental purposes. Such a regulation may be issued either upon the director's own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect, if any, of such additive in the diet of man or animals, taking into account the same or any chemically or pharmacologically related substance or substances in such diet; (d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of color additives for the use or uses for which the additive is proposed to be listed, are generally recognized as appropriate for the use of animal experimentation data; (e) the availability of any needed practicable methods of analysis for determining the identity and quantity of (i) the pure dye and all intermediates and other impurities contained in such color additives, (ii) such additive in or on any article of food, and (iii) any substance formed in or on such article because of the use of such additive; and (f) the conformity by the manufacturer with the established standards in the industry relating to the proper formation of such color additive so as to result in a finished product safe

for use as a color additive. [1975 1st ex.s. c 7 § 28; 1963 c 198 § 6.]

Purpose of section: See RCW 69.04.398.

Food—Adulteration by color additive: RCW 69.04.231.

69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations. The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 is to promote uniformity of state legislation and regulations with the Federal Food, Drug and Cosmetic Act 21 USC 301 et seq. and regulations adopted thereunder. In accord with such declared purpose any regulation adopted under said federal food, drug and cosmetic act concerning food in effect on July 1, 1975, and not adopted under any other specific provision of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 are hereby deemed to have been adopted under the provision hereof. Further, to promote such uniformity any regulation adopted hereafter under the provisions of the federal food, drug and cosmetic act concerning food and published in the federal register shall be deemed to have been adopted under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 in accord with chapter 34.04 RCW as enacted or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal food, drug and cosmetic act give public notice that a hearing will be held to determine if such regulation shall not be applicable under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such hearing shall be in accord with the requirements of chapter 34.04 RCW as enacted or hereafter amended. [1975 1st ex.s. c 7 § 36.]

69.04.400 Conformance with federal regulations. The regulations promulgated under RCW 69.04.390 shall conform, insofar as practicable, with those promulgated under section 406 of the federal act. [1963 c 198 § 7; 1945 c 257 § 58; Rem. Supp. 1945 § 6163–107.]

69.04.410 Drugs—Adulteration by harmful substances. A drug or device shall be deemed to be adulterated (1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one that is harmless and suitable for use in drugs for such purposes, as provided by regulations promulgated under section 504 of the federal act. [1945 c 257 § 59; Rem. Supp. 1945 § 6163–108. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.420 Drugs—Adulteration for failure to comply with compendium standard. If a drug or device purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength

differs from, or its quality or purity falls below, the standard set forth in such compendium, it shall be deemed to be adulterated. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or prescribed by regulations promulgated under section 501(b) of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this section because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia. [1945 c 257 § 60; Rem. Supp. 1945 § 6163–109.]

69.04.430 Drugs—Adulteration for lack of represented purity or quality. If a drug or device is not subject to the provisions of RCW 69.04.420 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess, it shall be deemed to be adulterated. [1945 c 257 § 61; Rem. Supp. 1945 § 6163–110.]

69.04.440 Drugs—Adulteration by admixture or substitution of ingredients. A drug shall be deemed to be adulterated if any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor. [1945 c 257 § 62; Rem. Supp. 1945 § 6163–111.]

69.04.450 Drugs—Misbranding by false labeling. A drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular. [1945 c 257 § 63; Rem. Supp. 1945 § 6163–112. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.460 Packaged drugs—Misbranding. If a drug or device is in package form, it shall be deemed to be misbranded unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 64; Rem. Supp. 1945 § 6163–113. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.470 Drugs—Misbranding by lack of prominent label. A drug or device shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with

other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 65; Rem. Supp. 1945 § 6163-114. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.480 Drugs—Misbranding for failure to state content of habit forming drug. A drug or device shall be deemed to be misbranded if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, beta eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which derivative has been designated as habit forming by regulations promulgated under section 502(d) of the federal act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming." [1945 c 257 § 66; Rem. Supp. 1945 § 6163-115. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.490 Drugs—Misbranding by failure to show usual name and ingredients. If a drug is not designated solely by a name recognized in an official compendium it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: *Provided*, That to the extent that compliance with the requirements of clause (2) of this section is impracticable, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 67; Rem. Supp. 1945 § 6163-116. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.500 Drugs—Misbranding by failure to give directions for use and warnings. A drug or device shall be deemed to be misbranded unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: *Provided*, That where any requirement of clause (1) of this section as applied to any drug or device, is not necessary for the protection of the public health, the director shall promulgate regulations exempting such drug or device from such requirements. Such regulations shall include the exemptions prescribed under section 502(f)(1) of the federal act, insofar as such exemptions are applicable

hereunder. [1945 c 257 § 68; Rem. Supp. 1945 § 6163-117. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.510 Drugs—Misbranding for improper packaging and labeling. A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: *Provided*, That the method of packing may be modified with the consent of the director, as permitted under section 502(g) of the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia. [1945 c 257 § 69; Rem. Supp. 1945 § 6163-118. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.520 Drugs—Misbranding for failure to show possibility of deterioration. If a drug or device has been found by the secretary of agriculture of the United States to be a drug liable to deterioration, it shall be deemed to be misbranded unless it is packaged in such form and manner, and its label bears a statement of such precautions, as required in an official compendium or by regulations promulgated under section 502(h) of the federal act for the protection of the public health. [1945 c 257 § 70; Rem. Supp. 1945 § 6163-119. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.530 Drugs—Misbranding by misleading representation. A drug shall be deemed to be misbranded if (1) its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug; or (4) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof. [1945 c 257 § 71; Rem. Supp. 1945 § 6163-120. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it. A drug or device shall be deemed to be misbranded if it is a drug which by label provides, or which the federal act or any applicable law requires by label to provide, in effect, that it shall be used only upon the prescription of a physician, dentist, or veterinarian, unless it is dispensed at retail on a written prescription signed by a physician, dentist, or veterinarian, who is licensed by law to administer such a drug. [1945 c 257 § 72; Rem. Supp. 1945 § 6163-121. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.550 Drugs exempt if in transit for completion purposes. A drug or device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally

processed or packed, is exempted from the affirmative labeling and packaging requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 73; Rem. Supp. 1945 § 6163-122.]

69.04.560 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the requirements of RCW 69.04.450 through 69.04.540. [1945 c 257 § 74; Rem. Supp. 1945 § 6163-123.]

69.04.570 Introduction of new drug. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the federal act unless an application with respect to such drug has become effective thereunder. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is not subject to section 505 of the federal act, unless (1) it has been found, by appropriate tests, that such drug is not unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; and (2) an application has been filed under this section of this chapter with respect to such drug: *Provided*, That the requirement of clause (2) shall not apply to any drug introduced into intrastate commerce at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act: *Provided further*, That if the director finds that the requirement of clause (2) as applied to any drug or class of drugs, is not necessary for the protection of the public health, he shall promulgate regulations of exemption accordingly. [1945 c 257 § 75; Rem. Supp. 1945 § 6163-124.]

69.04.580 Application for introduction. An application under RCW 69.04.570 shall be filed with the director, and subject to any waiver by the director, shall include (1) full reports of investigations which have been made to show whether or not the drug, subject to the application, is safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the director may require; and (6) specimens of

the labeling proposed to be used for such drug. [1945 c 257 § 76; Rem. Supp. 1945 § 6163-125.]

69.04.590 Effective date of application. An application filed under RCW 69.04.570 shall become effective on the sixtieth day after the filing thereof, unless the director (1) makes such application effective prior to such day; or (2) issues an order with respect to such application pursuant to RCW 69.04.600. [1945 c 257 § 77; Rem. Supp. 1945 § 6163-126.]

69.04.600 Denial of application. If the director finds, upon the basis of the information before him and after due notice and opportunity for hearing to the applicant, that the drug, subject to the application, is not safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, he shall, prior to such effective date, issue an order refusing to permit such application to become effective and stating the findings upon which it is based. [1945 c 257 § 78; Rem. Supp. 1945 § 6163-127.]

69.04.610 Revocation of denial. An order refusing to permit an application under RCW 69.04.570 to become effective may be suspended or revoked by the director, for cause and by order stating the findings upon which it is based. [1945 c 257 § 79; Rem. Supp. 1945 § 6163-128.]

69.04.620 Service of order of denial. Orders of the director issued under RCW 69.04.600 shall be served (1) in person by a duly authorized representative of the director or (2) by mailing the order by registered mail addressed to the applicant or respondent at his address last known to the director. [1945 c 257 § 80; Rem. Supp. 1945 § 6163-129.]

69.04.630 Drug for investigational use exempt. A drug shall be exempt from the operation of RCW 69.04.570 which is intended, and introduced or delivered for introduction into intrastate commerce, solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs and which is plainly labeled "For investigational use only." [1945 c 257 § 81; Rem. Supp. 1945 § 6163-130.]

69.04.640 Court review of denial. The superior court of Thurston county shall have jurisdiction to review and to affirm, modify, or set aside any order issued under RCW 69.04.600, upon petition seasonably made by the person to whom the order is addressed and after prompt hearing upon due notice to both parties. [1945 c 257 § 82; Rem. Supp. 1945 § 6163-131.]

69.04.650 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription,

and the name of such physician, dentist, or veterinarian, be exempt from the operation of RCW 69.04.570 through 69.04.640. [1945 c 257 § 83; Rem. Supp. 1945 § 6163-132.]

69.04.660 Federally licensed drugs exempt. The provisions of RCW 69.04.570 shall not apply to any drug which is licensed under the federal virus, serum, and toxin act of July 1, 1902; or under the federal virus, serums, toxins, antitoxins, and analogous products act of March 4, 1913. [1945 c 257 § 84; Rem. Supp. 1945 § 6163-133.]

69.04.670 Cosmetics—Adulteration by injurious substances. A cosmetic shall be deemed to be adulterated (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual: *Provided*, That this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes; or (2) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (3) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (4) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (5) if it is not a hair dye and it bears or contains a coal tar color other than one that is harmless and suitable for use in cosmetics, as provided by regulations promulgated under section 604 of the federal act. [1945 c 257 § 85; Rem. Supp. 1945 § 6163-134.]

69.04.680 Cosmetics—Misbranding by false label, etc. A cosmetic shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if in package form, unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (b) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the director. [1945 c 257 § 86; Rem. Supp. 1945 § 6163-135.]

69.04.690 Cosmetics—Misbranding by lack of prominent label. A cosmetic shall be deemed to be misbranded (1) if any word, statement, or other information required by or under authority of this chapter to appear

on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or (2) if its container is so made, formed, or filled as to be misleading. [1945 c 257 § 87; Rem. Supp. 1945 § 6163-136.]

69.04.700 Cosmetics exempt if in transit for completion purposes. A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 88; Rem. Supp. 1945 § 6163-137.]

69.04.710 Advertisement, when deemed false. An advertisement of a food, drug, device, or cosmetic shall be deemed to be false, if it is false or misleading in any particular. [1945 c 257 § 89; Rem. Supp. 1945 § 6163-138.]

69.04.720 Advertising of cure of certain diseases deemed false. The advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false; except that no advertisement not in violation of RCW 69.04.710 shall be deemed to be false under this section if it is disseminated only to members of the medical, veterinary, dental, pharmaceutical, and other legally recognized professions dealing with the healing arts, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: *Provided*, That whenever the director determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the director shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the director may deem necessary in the interest of public health: *Provided further*, That this section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. [1945 c 257 § 90; Rem. Supp. 1945 § 6163-139.]

69.04.730 Enforcement, where vested—Regulations. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director: *Provided, however,* That the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1945 c 257 § 91 (vetoed); 1947 c 25 (passed notwithstanding veto); Rem. Supp. 1947 § 6163–139a.]

69.04.740 Regulations to conform with federal regulations. The purpose of this chapter being to promote uniformity of state legislation with the federal act, the director is hereby authorized (1) to adopt, insofar as applicable, the regulations from time to time promulgated under the federal act; and (2) to make the regulations promulgated under this chapter conform, insofar as practicable, with those promulgated under the federal act. [1945 c 257 § 92; Rem. Supp. 1945 § 6163–140.]

69.04.750 Hearings. Hearings authorized or required by this chapter shall be conducted by the director or his duly authorized representative designated for the purpose. [1945 c 257 § 93; Rem. Supp. 1945 § 6163–141.]

69.04.761 Hearing on proposed regulation—Procedure. The director shall hold a public hearing upon a proposal to promulgate any new or amended regulation under this chapter. The procedure to be followed concerning such hearings shall comply in all respects with chapter 34.04 RCW (Administrative Procedure Act) as now enacted or hereafter amended. [1963 c 198 § 13.]

69.04.770 Review on petition prior to effective date. The director shall have jurisdiction to review and to affirm, modify, or set aside any order issued under RCW 69.04.760, promulgating a new or amended regulation under this chapter, upon petition made at any time prior to the effective date of such regulation, by any person adversely affected by such order. [1945 c 257 § 95; Rem. Supp. 1945 § 6163–143.]

69.04.780 Investigations—Samples—Right of entry. The director shall cause the investigation and examination of food, drugs, devices, and cosmetics subject to this chapter. The director shall have the right (1) to take a sample or specimen of any such article, for examination under this chapter, upon tendering the market price therefor to the person having such article in custody; and (2) to enter any place or establishment within this state, at reasonable times, for the purpose of taking a sample or specimen of any such article, for such examination. [1945 c 257 § 96; Rem. Supp. 1945 § 6163–144.]

69.04.790 Owner may obtain part of sample. Where a sample or specimen of any such article is taken for examination under this chapter the director shall, upon request, provide a part thereof for examination by any person named on the label of such article, or the owner thereof, or his attorney or agent; except that the director

is authorized, by regulation, to make such reasonable exceptions from, and to impose such reasonable terms and conditions relating to, the operation of this section as he finds necessary for the proper administration of the provisions of this chapter. [1945 c 257 § 97; Rem. Supp. 1945 § 6163–145.]

69.04.800 Access to records of other agencies. For the purpose of enforcing the provisions of this chapter, pertinent records of any administrative agency of the state government shall be open to inspection by the director. [1945 c 257 § 98; Rem. Supp. 1945 § 6163–146.]

69.04.810 Access to records of intrastate carriers. For the purpose of enforcing the provisions of this chapter, carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding such articles so received, shall, upon the request of the director, permit the director at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and the copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: *Provided,* That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: *Provided further,* That carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers. [1945 c 257 § 99; Rem. Supp. 1945 § 6163–147.]

69.04.820 Right of entry to factories, warehouses, vehicles, etc. For the purpose of enforcing the provisions of this chapter, the director is authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment subject to this chapter, or to enter any vehicle being used to transport or hold food, drugs, devices, or cosmetics in intrastate commerce; and (2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, labeling, and advertisements therein. [1945 c 257 § 100; Rem. Supp. 1945 § 6163–148.]

69.04.830 Publication of reports of judgments, orders and decrees. The director may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof. [1945 c 257 § 101; Rem. Supp. 1945 § 6163–149.]

69.04.840 Dissemination of information. The director may cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving,

in the opinion of the director, imminent danger to health or gross deception of, or fraud upon, the consumer. Nothing in this section shall be construed to prohibit the director from collecting, reporting, and illustrating the results of his examinations and investigations under this chapter. [1945 c 257 § 102; Rem. Supp. 1945 § 6163-150.]

69.04.845 Severability—1945 c 257. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1945 c 257 § 103; Rem. Supp. 1945 § 6163-151.]

69.04.850 Construction—1945 c 257. This chapter and the regulations promulgated hereunder shall be so interpreted and construed as to effectuate its general purpose to secure uniformity with federal acts and regulations relating to adulterating, misbranding and false advertising of food, drugs, devices, and cosmetics. [1945 c 257 § 104; Rem. Supp. 1945 § 6163-152.]

69.04.860 Effective date of chapter. This chapter shall take effect ninety days after the date of its enactment, and all state laws or parts of laws in conflict with this chapter are then repealed: *Provided*, That the provisions of section 91 shall become effective on the enactment of this chapter, and thereafter the director is hereby authorized to conduct hearings and to promulgate regulations which shall become effective on or after the effective date of this chapter as the director shall direct: *Provided further*, That all other provisions of this chapter to the extent that they may relate to the enforcement of such sections, shall take effect on the date of the enactment of this chapter. [1945 c 257 § 105; Rem. Supp. 1945 § 6163-153.]

Reviser's note: 1945 c 257 § 91 referred to herein was vetoed by the governor but subsequently reenacted as 1947 c 25 notwithstanding the veto. Section 91 is codified as RCW 69.04.730. For effective date of section 91 see preface 1947 session laws.

69.04.870 Short title. This chapter may be cited as the Uniform Washington Food, Drug, and Cosmetic Act. [1945 c 257 § 1; Rem. Supp. 1945 § 6163-50.]

69.04.900 Perishable packaged food—Pull date labeling—Definitions. For the purpose of RCW 69.04.900 through 69.04.920:

(1) "Perishable packaged food goods" means and includes all foods and beverages, except alcoholic beverages, frozen foods, fresh meat, poultry and fish and a raw agricultural commodity as defined in this chapter, intended for human consumption which are canned, bottled, or packaged other than at the time and point of retail sale, which have a high risk of spoilage within a period of thirty days, and as determined by the director of the department of agriculture by rule and regulation to be perishable.

(2) "Pull date" means the latest date a packaged food product shall be offered for sale to the public.

(3) "Shelf life" means the length of time during which a packaged food product will retain its safe consumption quality if stored under proper temperature conditions.

(4) "Fish" as used in subsection (1) of this section shall mean any water breathing animals, including, but not limited to, shellfish such as lobster, clams, crab, or other mollusca which are prepared, processed, sold, or intended or offered for sale. [1974 ex.s. c 57 § 1; 1973 1st ex.s. c 112 § 1.]

69.04.905 Perishable packaged food—Pull date labeling—Required. All perishable packaged food goods with a projected shelf life of thirty days or less, which are offered for sale to the public after January 1, 1974 shall state on the package the pull date. The pull date must be stated in day, and month and be in a style and format that is readily decipherable by consumers: *Provided*, That the director of the department of agriculture may exclude the monthly requirement on the pull date for perishable packaged food goods which have a shelf life of seven days or less. No perishable packaged food goods shall be offered for sale after the pull date, except as provided in RCW 69.04.910. [1974 ex.s. c 57 § 2; 1973 1st ex.s. c 112 § 2.]

69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception. No person shall sell, trade or barter any perishable packaged food goods beyond the pull date appearing thereon, nor shall any person rewrap or repackage any packaged perishable food goods with the intention of placing a pull date thereon which is different from the original: *Provided, however*, That those packaged perishable food goods whose pull dates have expired may be sold if they are still wholesome and are without danger to health, and are clearly identified as having passed the pull date. [1973 1st ex.s. c 112 § 3.]

69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations. The director of the department of agriculture shall by rule and regulation establish uniform standards for pull date labeling, and optimum storage conditions of perishable packaged food goods. In addition to his other duties the director, in consultation with the director of the department of social and health services where appropriate, may promulgate such other rules and regulations as may be necessary to carry out the purposes of RCW 69.04.900 through 69.04.920. [1973 1st ex.s. c 112 § 4.]

69.04.920 Perishable packaged food—Pull date labeling—Penalties. Any person convicted of a violation of RCW 69.04.905 or 69.04.910 shall be punishable by a fine not to exceed five hundred dollars. [1973 1st ex.s. c 112 § 5.]

69.04.930 Frozen fish and meat—Labeling requirements—Exceptions. It shall be unlawful for any person to sell at retail or display for sale at retail any food fish or shellfish as defined in RCW 75.04.040 as now or hereafter amended, any meat capable of use as

human food as defined in RCW 16.49A.150 as now or hereafter amended, or any meat food product as defined in RCW 16.49A.130 as now or hereafter amended which has been frozen subsequent to being offered for sale or distribution to the ultimate consumer, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such food fish or shellfish, meat or meat food product shall be sold unless in such a package or container bearing said label: *Provided*, That this section shall not include any of the aforementioned food or food products that have been frozen prior to being smoked, cured, cooked or subjected to the heat of commercial sterilization. [1975 c 39 § 1.]

Chapter 69.06

FOOD AND BEVERAGE ESTABLISHMENT WORKERS' PERMITS

Sections

69.06.010	Food and beverage service worker's permit—Filing, duration.
69.06.020	Permit exclusive and valid throughout state—Cost.
69.06.030	Diseased persons—May not work—Employer may not hire.
69.06.040	Chapter applies only to certain retail establishments.
69.06.050	Permit to be secured within thirty days from time of employment.
69.06.060	Penalty.

69.06.010 Food and beverage service worker's permit—Filing, duration. It shall be unlawful for any person to be employed in the handling of unwrapped or unpackaged food unless he or she shall furnish and place on file with the person in charge of such establishment, a food and beverage service worker's permit, as prescribed by the state board of health. Such permit shall be kept on file by the employer and open for inspection at all reasonable hours by authorized public health officials. Such permit shall be returned to the employee upon termination of employment. Permits shall be valid for two years from date of issuance, and each employee shall furnish the person in charge of said food handling establishments such permit biennially. [1957 c 197 § 1.]

Sunset Act application: See note following RCW 43.20.030.

69.06.020 Permit exclusive and valid throughout state—Cost. The permit provided in RCW 69.06.010 shall be valid in every city, town and county in the state, for the period for which it is issued, and no other health certificate shall be required of such employees by any municipal corporation or political subdivision of the state. The cost of the permit shall be uniform throughout the state and shall be in that amount set by the state board of health, not to exceed two dollars. [1957 c 197 § 2.]

Sunset Act application: See note following RCW 43.20.030.

69.06.030 Diseased persons—May not work—Employer may not hire. It shall be unlawful for any person afflicted with any contagious or infectious disease to

work in or about any place where unwrapped or unpackaged food and/or beverage products are prepared or sold, or offered for sale for human consumption and it shall be unlawful for any person knowingly to employ a person so afflicted. [1957 c 197 § 3.]

69.06.040 Chapter applies only to certain retail establishments. This chapter shall apply only to retail establishments regularly engaged in the business of food handling or food service. [1957 c 197 § 4.]

69.06.050 Permit to be secured within thirty days from time of employment. Individuals under this chapter shall have thirty days from commencement of employment to secure health permits. [1957 c 197 § 5.]

Sunset Act application: See note following RCW 43.20.030.

69.06.060 Penalty. Any violation of the provisions of this chapter shall be a misdemeanor. [1957 c 197 § 6.]

Chapter 69.07

WASHINGTON FOOD PROCESSING ACT

Sections

69.07.010	Definitions.
69.07.020	Enforcement—Rules—Adoption—Contents—Standards.
69.07.040	Food processing license—Expiration date—Application, contents—Fee.
69.07.050	Renewal of license—Additional fee, when.
69.07.060	Denial, suspension or revocation of license—Grounds.
69.07.070	Rules and regulations, hearings subject to Administrative Procedure Act.
69.07.080	Inspections by department—Access—When.
69.07.090	Requirements for plants already in operation—Extension of time for compliance, when.
69.07.100	Establishments exempted from provisions of chapter.
69.07.110	Enforcement of chapter.
69.07.120	Disposition of moneys.
69.07.130	Chapter not to affect existing liabilities.
69.07.140	Violations—Warning notice.
69.07.150	Violations—Penalties.
69.07.160	Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW.
69.07.900	Chapter is cumulative and nonexclusive.
69.07.910	Severability—1967 ex.s. c 121.
69.07.920	Short title.

69.07.010 Definitions. For the purposes of this chapter:

(1) "Department" means the department of agriculture of the state of Washington;

(2) "Director" means the director of the department;

(3) "Food" means any substance used for food or drink by man and any ingredient used for components of any such substance regardless of the quantity of such component;

(4) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media;

(5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: *Provided*, That it shall not include

fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;

(6) "Food processing plant" includes but is not limited to any premises, plant, establishment, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for resale or distribution to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: *Provided*, That retail outlets, as set forth herein, processing foods in any manner for resale shall be considered a food processing plant as to such processing;

(7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants. [1967 ex.s. c 121 § 1.]

69.07.020 Enforcement—Rules—Adoption—Contents—Standards. (1) The department shall enforce and carry out the provisions of this chapter, and may adopt the necessary rules to carry out its purposes.

(2) Such rules may include:

(a) Standards for temperature controls in the storage of foods, so as to provide proper refrigeration.

(b) Standards for temperatures at which low acid foods must be processed and the length of time such temperatures must be applied and at what pressure in the processing of such low acid foods.

(c) Standards and types of recording devices that must be used in providing records of the processing of low acid foods, and how they shall be made available to the department of agriculture for inspection.

(d) Requirements for the keeping of records of the temperatures, times and pressures at which foods were processed, or for the temperatures at which refrigerated products were stored by the licensee and the furnishing of such records to the department.

(e) Standards that must be used to establish the temperature and purity of water used in the processing of foods. [1969 c 68 § 1; 1967 ex.s. c 121 § 2.]

69.07.040 Food processing license—Expiration date—Application, contents—Fee. It shall be unlawful for any person to operate a food processing plant or process foods without first having obtained an annual

license from the department, which shall expire on the 31st day of March following issuance. A separate license shall be required for each food processing plant. Application for a license shall be on a form prescribed by the director and accompanied by a ten dollar annual license fee. Such application shall include the full name of the applicant for the license and the location of the food processing plant he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. [1969 c 68 § 2; 1967 ex.s. c 121 § 4.]

69.07.050 Renewal of license—Additional fee, when. If the application for renewal of any license provided for under this chapter is not filed prior to April 1st in any year, an additional fee of five dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he has not operated a food processing plant or processed foods subsequent to the expiration of his license. [1967 ex.s. c 121 § 5.]

69.07.060 Denial, suspension or revocation of license—Grounds. The director may, subsequent to a hearing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter.

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington Food, Drug, and Cosmetic Act, or any regulations adopted thereunder. [1979 c 154 § 19; 1967 ex.s. c 121 § 6.]

Severability—1979 c 154: See note following RCW 15.49.330.

69.07.070 Rules and regulations, hearings subject to Administrative Procedure Act. The adoption of any rules and regulations under the provisions of this chapter, or

the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.04 RCW, the Administrative Procedure Act, as enacted or hereafter amended. [1967 ex.s. c 121 § 7.]

69.07.080 Inspections by department—Access—

When. For purpose of determining whether the rules adopted pursuant to RCW 69.07.020, as now or hereafter amended are complied with, the department shall have access for inspection purposes to any part, portion or area of a food processing plant, and any records required to be kept under the provisions of this chapter or rules and regulations adopted hereunder. Such inspection shall, when possible, be made during regular business hours or during any working shift of said food processing plant. The department may, however, inspect such food processing plant at any time when it has received information that an emergency affecting the public health has arisen and such food processing plant is or may be involved in the matters causing such emergency. [1969 c 68 § 3; 1967 ex.s. c 121 § 8.]

69.07.090 Requirements for plants already in operation—Extension of time for compliance, when. Any food processing plant in actual operation at the time of July 30, 1967 or any seasonal food processing plant which has operated during any portion of the twelve months immediately preceding July 30, 1967, shall be granted a license, upon application and payment of the proper license fee, subject to meeting those immediate and absolute minimum requirements in this chapter or rules or regulations promulgated thereunder for the protection of the public health. The department may, however, grant such food processing plant such additional time as may be reasonably necessary, to allow for major renovations, improvements, or additions to said food processing plant, as required to meet the provisions of this chapter or rules and regulations adopted hereunder: *Provided*, That such extension of time shall not apply to the mandatory use of indicating and recording thermometers on retorts or other facilities or equipment used to process food under temperature changes. [1967 ex.s. c 121 § 9.]

69.07.100 Establishments exempted from provisions of chapter. The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

- (1) Chapter 15.32 RCW, the Dairies and dairy products act;
- (2) Chapter 69.12 RCW, the Bakeries and bakery products act;
- (3) Chapter 69.16 RCW, the Macaroni and macaroni products act;
- (4) Chapter 69.20 RCW, the Confections act;
- (5) *Chapter 69.24 RCW, the Egg and egg products act;
- (6) Chapter 69.28 RCW, the Washington state honey act;
- (7) Chapter 16.49 RCW, the Meat inspection act;

(8) Title 66 RCW, relating to alcoholic beverage control; and

(9) Chapter 69.30 RCW, the Sanitary control of shellfish act: *Provided*, That if any such establishments process foods not specifically provided for in the above entitled acts, such establishments shall be subject to the provisions of this chapter.

The provisions of this chapter shall not apply to restaurants or food service establishments. [1967 ex.s. c 121 § 10.]

*Reviser's note: Chapter 69.24 RCW was repealed by 1975 1st ex.s. 201 § 40 and this subject is now covered by chapter 69.25 RCW.

69.07.110 Enforcement of chapter. The department may use all the civil remedies provided for in chapter 69.04 RCW (The Uniform Washington Food, Drug, and Cosmetic Act) in carrying out and enforcing the provisions of this chapter. [1967 ex.s. c 121 § 11.]

69.07.120 Disposition of moneys. All moneys received by the department under the provisions of this chapter shall be paid into the state treasury. [1967 ex.s. c 121 § 12.]

69.07.130 Chapter not to affect existing liabilities. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 30, 1967. [1967 ex.s. c 121 § 13.]

69.07.140 Violations—Warning notice. Nothing in this chapter shall be construed as requiring the department to report for prosecution violations of this chapter when it believes that the public interest will best be served by a suitable notice of warning in writing. [1967 ex.s. c 121 § 14.]

69.07.150 Violations—Penalties. Any person violating any provision of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1967 ex.s. c 121 § 15.]

69.07.160 Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW. The authority granted to the director and to the department under the provisions of the Uniform Washington Food, Drug, and Cosmetic Act (chapter 69.04 RCW), as now or hereafter amended, shall not be deemed to be reduced or otherwise impaired as a result of any provision or provisions of the Washington Food Processing Act (chapter 69.07 RCW). [1969 c 68 § 4.]

69.07.900 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1967 ex.s. c 121 § 16.]

69.07.910 Severability—1967 ex.s. c 121. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 121 § 17.]

69.07.920 Short title. This chapter shall be known and designated as the Washington food processing act. [1967 ex.s. c 121 § 18.]

Chapter 69.08

FLOUR, WHITE BREAD, AND ROLLS

Sections	
69.08.010	Definitions.
69.08.020	Director, duty to enforce.
69.08.030	Flour—Content requirements.
69.08.040	Bread and rolls—Content requirements.
69.08.045	Specialty breads or rolls, macaroni or macaroni products, enriched white flour required— Exemptions.
69.08.050	Intrastate and interstate standards to conform.
69.08.060	Shortage of ingredients—Procedure.
69.08.070	Regulations, how and where kept—Copies for distribution.
69.08.080	Right of entry, to take samples, etc.
69.08.090	Penalty.

Grist mills: Chapter 19.44 RCW.

Weights and measures, bread: RCW 19.92.100–19.92.120.

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

(1) "Flour" includes and shall be limited to the foods commonly known in the milling and baking industries as (a) white flour, also known as wheat flour or plain flour; (b) bromated flour; (c) self-rising flour, also known as self-rising white flour or self-rising wheat flour, and (d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excludes whole wheat flour;

(2) "White bread" means any bread made with flour, as defined in (1), whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread;

(3) "Specialty breads" shall mean any yeast-raised bread, such as potato bread, raisin bread or egg sesame bread other than that bread defined in subsection (2) above;

(4) "Rolls" includes plain white rolls and buns of the semibread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, Parker House rolls, and hard rolls, such as Vienna rolls, Kaiser rolls, but shall not include yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls;

(5) "Specialty rolls" shall mean any sweet rolls or sweet buns, including those made with fillings or coatings, such as cinnamon rolls or buns, butterfly rolls, doughnuts, and English muffins, other than those rolls defined in subsection (4) above;

(6) "Director" means the director of the state department of agriculture of the state of Washington;

(7) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread or rolls. [1971 c 27 § 1; 1945 c 192 § 1; Rem. Supp. 1945 § 6294–160.]

69.08.020 Director, duty to enforce. The director is hereby charged with the duty of enforcing the provisions of this chapter and he is hereby authorized and directed to make, amend or rescind regulations for the efficient enforcement of this chapter. [1945 c 192 § 4; Rem. Supp. 1945 § 6294–163.]

69.08.030 Flour—Content requirements. It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour, as defined in RCW 69.08.010, unless the following vitamins and minerals are contained in each pound of such flour; not less than 2.0 mg and not more than 2.5 mg of thiamine; not less than 1.2 mg and not more than 1.5 mg of riboflavin; not less than 16.0 mg and not more than 20.0 mg of niacin or niacin-amide; not less than 13.0 mg and not more than 16.5 mg of iron (Fe); except in the case of self-rising flour which in addition to the above ingredients shall contain not less [than] 500 mg and not more than 1500 mg of calcium (Ca): *Provided, however,* That the terms of this section shall not apply to flour sold to distributors, bakers or other processors, if the purchaser furnishes to the seller a certificate in such form as the director shall by regulation prescribe, certifying that such flour will be (1) resold to a distributor, baker or other processor, or (2) used in the manufacture, mixing or compounding of flour, white bread or rolls enriched to meet the requirements of this chapter, or (3) used in the manufacture of products other than flour, white bread or rolls. It shall be unlawful for any such purchaser so furnishing any such certificate to use or resell the flour so purchased in any manner other than as prescribed in this section. [1945 c 192 § 2; Rem. Supp. 1945 § 6294–161.]

69.08.040 Bread and rolls—Content requirements. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls as defined in RCW 69.08.010, unless the following vitamins and minerals are contained in each pound of such bread or rolls: Not less than 1.1 mg and not more than 1.8 mg of thiamine; not less than 0.7 mg and not more than 1.6 mg of riboflavin; not less than 10.0 mg and not more than 15.0 mg of niacin; not less than 8.0 mg and not more than 12.5 mg of iron (Fe). [1945 c 192 § 3; Rem. Supp. 1945 § 6294–162.]

69.08.045 Specialty breads or rolls, macaroni or macaroni products, enriched white flour required—Exemptions. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale for human consumption in this state, any specialty breads, or specialty rolls as defined in RCW 69.08.010 or macaroni or macaroni products as defined in RCW 69.16.020 without

using enriched white flour in the baking thereof: *Provided, however,* That those products which contain one hundred percent whole wheat or graham flour are exempted from the requirements of this section. [1971 c 27 § 2.]

69.08.050 Intrastate and interstate standards to conform. Whenever the vitamin and mineral requirements set forth in RCW 69.08.030 and 69.08.040 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or enriched rolls, the director, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this chapter, is authorized and directed to modify or revise such requirements to conform with amended standards governing interstate shipments. [1945 c 192 § 5; Rem. Supp. 1945 § 6294-164.]

69.08.060 Shortage of ingredients—Procedure. In the event of findings by the director that there is an existing or imminent shortage of any ingredient required by RCW 69.08.030 and 69.08.040, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this chapter, the director shall issue a regulation, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls; and if he finds it necessary or appropriate, excepting such foods from labeling requirements until the further regulation of the director. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such regulation of the appropriate federal agency or factual information supplied by it, the director on his own motion may, and upon receiving the sworn statements of ten or more persons subject to this chapter that they believe such a shortage exists or is imminent shall, within twenty days thereafter hold a public hearing with respect thereto at which any interested person may present evidence; and shall make findings based upon the evidence presented. The director shall publish notice of any such hearing at least ten days prior thereto. Whenever the director has reason to believe that such shortage no longer exists, he shall hold a public hearing, after at least ten days' notice shall have been given, at which any interested person may present evidence, and he shall make findings based upon the evidence so presented. If his findings be that such shortage no longer exists, he shall issue a regulation to become effective not less than thirty days after publication thereof, revoking such previous regulation: *Provided, however,* That undisposed flour stocks of flour on hand at the effective date, of such revocation regulation, or flour manufactured prior to such effective date, for sale in this state may thereafter be lawfully sold or disposed of. [1945 c 192 § 6; Rem. Supp. 1945 § 6294-165.]

69.08.070 Regulations, how and where kept—Copies for distribution. All regulations adopted by the director pursuant to this chapter shall be kept in a well

bound book in the office of the director and shall become effective upon such date as the director shall fix. Printed copies of such regulations shall be made available for public distribution. [1945 c 192 § 7; Rem. Supp. 1945 § 6294-166.]

69.08.080 Right of entry, to take samples, etc. For the purpose of this chapter, the director, or such officers or employees under his supervision as he may designate, is authorized to take samples for analysis and to conduct examinations and investigations, and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held, or any vehicle being used for the transportation thereof, and to inspect any such place or vehicle and any flour, white bread or rolls therein, and all pertinent equipment, materials, containers and labeling. [1945 c 192 § 8; Rem. Supp. 1945 § 6294-167.]

69.08.090 Penalty. Any person who violates any of the provisions of this chapter or the orders, rules or regulations promulgated by the director under authority thereof, shall upon conviction thereof be subjected to fine for each and every offense, in a sum not exceeding one thousand dollars, or to imprisonment, not to exceed ninety days. [1945 c 192 § 9; Rem. Supp. 1945 § 6294-168.]

Chapter 69.12

BAKERIES AND BAKERY PRODUCTS—1937 ACT

Sections

69.12.010	Declaration of policy.
69.12.020	Definitions.
69.12.030	Bakery license—Application.
69.12.040	Distributor's license—Application.
69.12.050	License fees—Expiration date— Nontransferability.
69.12.060	Revocation or suspension of license.
69.12.070	Diseased persons barred—Health certificates.
69.12.080	Inspection of premises and vehicles.
69.12.110	Subpoenas and taking testimony.
69.12.120	Penalty.

Weights and measures, bread: RCW 19.92.100-19.92.120.

69.12.010 Declaration of policy. This chapter is in exercise of the police powers of the state for the protection of the safety, health and welfare of the people of the state. It hereby is found and declared that the public welfare requires control and regulation of the manufacture and distribution of bread and other bakery products and of persons engaged therein, in order that there may be prevented or eliminated unsanitary, unhealthful, fraudulent, and unfair or uneconomic practices and conditions in connection with such manufacture or distribution which endanger public health, defraud consumers, jeopardize the public source and supply of a nourishing, healthful food, and seriously affect adversely a large and essential industry. It is further found and declared that the regulation of the commercial manufacture and distribution of bakery products as in this chapter provided

is in the interest of the economic and social well-being and the health and safety of the state and all of its people. [1937 c 137 § 1; RRS § 6284-1.]

Severability—1937 c 137: "If any clause, sentence, paragraph, section or part of this act shall, for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered." [1937 c 137 § 12.] This applies to RCW 69.12.010-69.12.120.

69.12.020 Definitions. Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:

(1) "Bakery" means any place, premises or establishment where any bakery product is regularly prepared, processed or manufactured for sale other than for consumption on the premises where originally prepared, processed or manufactured.

(2) "Bakery product" includes bread, rolls, cakes, pies, cookies, doughnuts, biscuits and all similar goods, to be used for human food.

(3) "Person" includes an individual, partnership or corporation. [1937 c 137 § 2; RRS § 6284-2.]

69.12.030 Bakery license—Application. No person shall operate or participate in the operation of any bakery within this state without having obtained from the director of agriculture a bakery license for that bakery issued and in effect under this chapter. Application for such license shall be made in writing and under oath to the director of agriculture, on such forms and with such pertinent information as he shall require. Such license shall be granted as a matter of right unless conditions exist which are grounds for a cancellation or revocation of a license as hereinafter set forth. [1937 c 137 § 3; RRS § 6284-3.]

69.12.040 Distributor's license—Application. No person hereafter shall engage within this state in the sale or distribution of any bakery product, other than exclusively at retail at a fixed place or places of business, without holding a license to do so issued to that person by the director of agriculture. A distributor's license shall not be required of any person distributing solely bakery products manufactured by him in a bakery licensed under this chapter. Application for such license shall be filed in writing and under oath with the director of agriculture upon such form as shall be prescribed and supplied by him. [1937 c 137 § 4; RRS § 6284-4.]

69.12.050 License fees—Expiration date—Nontransferability. (1) There shall be paid to the director of agriculture with each application for a bakery license or distributor's license or for renewal of such license an annual license fee of five dollars. All such license and renewal fees shall be deposited in the state's general fund.

(2) Each such license shall expire on December 31st following its date of issue, unless sooner revoked for

cause. Renewal may be obtained annually by surrendering to the director of agriculture the old license certificate and paying the required annual license fee. Such license shall not be transferable to any person or be applicable to any location other than that for which originally issued. [1967 c 240 § 44; 1937 c 137 § 5; RRS § 6284-5.]

Severability—1967 c 240: See note following RCW 43.23.010.

Bakery license fund abolished and funds transferred to state general fund. See 1967 c 240 §§ 47, 48.

69.12.060 Revocation or suspension of license. (1) The director of agriculture may cancel or suspend any such license if he finds after proper investigation that (a) the licensee has violated any provisions of this chapter or of any other law of this state relating to the operations of bakeries or the manufacture or handling of any bakery product, or any regulation effective thereunder or (b) the licensed bakery premises or any equipment used therein or in connection therewith is in an unsanitary condition and the licensee has failed or refused to remedy the same within ten days after receipt from the director of written notice to do so.

(2) No license shall be revoked or suspended by the director without delivery to the licensee of a written statement of the charge involved and an opportunity to answer such charge within ten days from the date of such notice.

(3) Any order made by the director suspending or revoking any license may be reviewed by certiorari in the superior court of the county in which the licensee is located within ten days of the date notice in writing of the director's order revoking or suspending such license has been served upon him. [1937 c 137 § 6; RRS § 6284-6.]

69.12.070 Diseased persons barred—Health certificates. (1) No person afflicted with any contagious or infectious disease shall work or be permitted to work or be employed in any bakery.

(2) No person shall work or be permitted to work in any bakery in storing, preparing, mixing or handling any bakery product or any ingredient thereof without holding a certificate from a physician, duly accredited for that purpose by the state board of health, certifying that such person has been examined and found free from any contagious or infectious disease. The state board of health may fix a maximum fee, not exceeding one dollar, which may be charged by a physician for such examination. Such certificate shall be effective for a period of six months and thereafter must be renewed following proper physical examination as aforesaid. Where such certificate is required and provided under municipal ordinance upon examination deemed adequate by the state board of health, certificates issued thereunder shall be sufficient under this chapter.

(3) Any such certificate shall be revoked by the state board of health at any time the holder thereof is found, after proper physical examination, to be afflicted with any communicable or infectious disease. Refusal of any person employed in a bakery to submit to proper and reasonable physical examination upon written demand of the state board of health or the director of agriculture

shall be cause for revocation of that person's health certificate. [1937 c 137 § 7; RRS § 6284-7.]

69.12.080 Inspection of premises and vehicles. The state director of agriculture shall cause to be made periodically a thorough inspection of each licensed bakery to determine whether or not the premises are constructed, equipped and operated in accordance with the requirements of this chapter and of all other laws of this state relating to bakeries or bakery products and all regulations effective thereunder. Such inspection shall also be made of each vehicle used by a bakery or distributor licensed under this chapter in transporting or distributing any bakery products within this state. The director shall employ no person as inspector who is a member or employee of a bakery or bakery operators' association or who is interested in any bakery or such association. [1939 c 44 § 1; 1937 c 137 § 8; RRS § 6284-8.]

69.12.110 Subpoenas and taking testimony. In any proceeding under this chapter the director of agriculture may administer oaths and issue subpoenas, summon witnesses and take testimony of any person within the state of Washington. [1937 c 137 § 10; RRS § 6284-10.]

69.12.120 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor. Each day such violation continues shall constitute a separate offense. [1937 c 137 § 11; RRS § 6284-11.]

Chapter 69.16

MACARONI AND MACARONI PRODUCTS

Sections

69.16.010	Declaration of policy.
69.16.015	Definitions.
69.16.020	"Macaroni products" defined.
69.16.021	"Macaroni factory" defined.
69.16.022	"Person" defined.
69.16.023	"Distributor" defined.
69.16.030	Factory permit—Application.
69.16.040	Distributor's permit—Application.
69.16.050	Permit fees—Use of funds.
69.16.060	Expiration date—Renewal—Nontransferability—Change of owner.
69.16.070	Permit—Revocation or suspension.
69.16.080	Revocation or suspension—Hearing.
69.16.090	Appeal.
69.16.100	Service of papers.
69.16.110	Work by diseased persons prohibited.
69.16.115	Food and beverage service worker's permit required.
69.16.120	Food and beverage service worker's permit required—Revocation—Refusal to furnish evidence of freedom from disease.
69.16.130	Inspection of factories and vehicles.
69.16.160	Specific unlawful acts.
69.16.170	Penalty.
69.16.900	Severability—1939 c 190.

Macaroni or macaroni products, enriched white flour required—Exemptions: RCW 69.08.045.

69.16.010 Declaration of policy. This chapter is in exercise of the police powers of the state for the protection of the safety, health and welfare of the people of the state; it is hereby found and declared that the public

welfare requires control and regulation of the manufacture and distribution of macaroni, noodles and related products and of persons engaged therein, in order that there may be prevented or eliminated insanitary, unhealthful, fraudulent, unfair or uneconomic practices and conditions in connection with such manufacture or distribution which endanger public health, defraud consumers, and jeopardize the public source and supply of a nourishing, healthful food. It is further found and declared that the regulation of the commercial manufacture and distribution of macaroni, noodles and related products as provided by this chapter is in the interest of the economic and social well-being and the health and safety of the state and its people, and is a necessary subject for immediate general legislation operating uniformly throughout the state. [1939 c 190 § 1; RRS § 6294-101.]

69.16.015 Definitions. Except where the context indicates a different meaning, terms used in this chapter shall be interpreted and construed as defined herein. [1939 c 190 § 2; RRS § 6294-102.]

69.16.020 "Macaroni products" defined. "Macaroni products" shall mean and include macaroni, spaghetti, vermicelli, noodles and all related products in whatever form or style the same may be prepared. [1939 c 190 § 3; RRS § 6294-103. FORMER PART OF SECTION: 1939 c 190 §§ 4 and 6 now codified as RCW 69.16.021 and 69.16.023.]

69.16.021 "Macaroni factory" defined. "Macaroni factory" shall mean any place, premises or establishment where any macaroni products are regularly prepared, processed or manufactured for sale rather than for consumption on such premises. [1939 c 190 § 4; RRS § 6294-104. Formerly RCW 69.16.020, part.]

69.16.022 "Person" defined. "Person" shall include an individual, partnership, corporation, association or club. [1939 c 190 § 5; RRS § 6294-105.]

69.16.023 "Distributor" defined. "Distributor" shall mean any person engaged within this state in the sale or distribution of any macaroni product by some method other than exclusively at retail at a fixed place or places of business, but shall not include any person distributing or selling macaroni products manufactured in a macaroni factory licensed under this chapter. [1939 c 190 § 6; RRS § 6294-106. Formerly RCW 69.16.020, part.]

69.16.030 Factory permit—Application. No person shall operate, or participate in the management and operation of any macaroni factory within this state without a macaroni factory permit therefor, under the provisions of this chapter. Application for such permit shall be made in writing and under oath to the director of agriculture, upon such forms and with such pertinent information as he shall require. [1939 c 190 § 7; RRS § 6294-107.]

69.16.040 Distributor's permit—Application. No person shall engage within this state in the business of

distributor without a permit to do so. Application for such permit shall be made in writing and under oath to the director of agriculture upon such form as shall be prescribed and supplied by him. [1939 c 190 § 8; RRS § 6294-108.]

69.16.050 Permit fees—Use of funds. There shall be paid to the director of agriculture with each application for a macaroni factory permit or distributor's permit or for renewal of such permit an annual fee of twenty-five dollars. All such permit and renewal fees shall be deposited in the state's general fund. [1967 c 240 § 45; 1939 c 190 § 9; RRS § 6294-109.]

Severability—1967 c 240: See note following RCW 43.23.010.

Macaroni license fund abolished and funds transferred to state general fund. See 1967 c 240 §§ 47, 48.

69.16.060 Expiration date—Renewal—Non-transferability—Change of owner. Each permit provided in this chapter shall expire on December 31st, following its date of issue, unless sooner revoked for cause. Renewal thereof may be obtained from the director by surrendering the previous year's permit and paying the permit fee. No permit shall be transferable nor shall it be applicable to any location other than that for which it was originally issued. Upon change of ownership or management of any macaroni factory the new owner or manager before assuming control shall notify the director of agriculture of the change in writing and obtain a new permit covering that establishment. [1939 c 190 § 10; RRS § 6294-110.]

69.16.070 Permit—Revocation or suspension. The director of agriculture may cancel or suspend any permit provided in this chapter if upon investigation he determines (1) that the permittee has violated any provision of this chapter or of any other law of this state relating to the operation of factories for the manufacture or handling of any macaroni product, or any regulation effective thereunder; or (2) that the factory premises or any equipment of the permittee used therein or in connection therewith is in an insanitary condition and that the permittee has failed or refused to remedy such condition within ten days after written notice to do so from the director. [1939 c 190 § 11; RRS § 6294-111.]

69.16.080 Revocation or suspension—Hearing. No permit shall be revoked or suspended by the director until after a written statement of the grounds therefor has been served upon the permittee and he is given at least ten days within which to answer such charge. For the purpose of making an investigation or of conducting a hearing with reference to such proposed revocation or suspension, the director of agriculture shall have power to conduct such hearing, administer oaths, take depositions, issue subpoenas and compel the attendance of witnesses and the production of books, papers, documents and testimony. [1939 c 190 § 12; RRS § 6294-112.]

69.16.090 Appeal. Within thirty days after an order revoking or suspending a permit is made by the director of agriculture any party aggrieved thereby may appeal

to the superior court of the county of his residence in this state. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail or personally on the director of agriculture. The director shall, within twenty days after receipt of such notice of appeal, serve and file notice of appearance and such appeal shall thereupon be deemed at issue. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No bond shall be required on such appeal but such appeal shall not stay proceedings before the director. The trial of said issues shall be by the court, and an appeal shall lie from its judgment as in other civil cases. [1939 c 190 § 13; RRS § 6294-113.]

69.16.100 Service of papers. Service as required in this chapter may be made by registered mail, return receipt requested, addressed to the permittee at the address given by him in his most recently filed application for a permit. [1939 c 190 § 14; RRS § 6294-114.]

69.16.110 Work by diseased persons prohibited. No person afflicted with any contagious or infectious disease shall work or be permitted to work or be employed in any macaroni factory. [1939 c 190 § 15; RRS § 6294-115. FORMER PART OF SECTION: 1939 c 190 § 16 now codified as RCW 69.16.115.]

69.16.115 Food and beverage service worker's permit required. No person shall work or be permitted to work in any macaroni factory in storing, preparing, mixing, or handling any macaroni product or any ingredient thereof without holding a food and beverage service worker's permit as prescribed by the state board of health as provided for in RCW 69.06.010. These permits shall be further subject to the provisions of RCW 69.06.020, 69.06.050 and 69.06.060. [1961 c 30 § 1; 1939 c 190 § 16; RRS § 6294-116. Formerly RCW 69.16.110, part.]

Sunset Act application: See note following RCW 43.20.030.

69.16.120 Food and beverage service worker's permit required—Revocation—Refusal to furnish evidence of freedom from disease. Any food and beverage service worker's permit shall be revoked in accordance with procedures prescribed by the state board of health at any time the holder thereof is found to be afflicted with any communicable or infectious disease. Refusal of any person employed in a macaroni factory to furnish evidence of freedom from any communicable or infectious disease upon proper demand by the state board of health or a local health officer shall be cause for revocation of that person's food and beverage service worker's permit. [1961 c 30 § 2; 1939 c 190 § 17; RRS § 6294-117.]

Sunset Act application: See note following RCW 43.20.030.

69.16.130 Inspection of factories and vehicles. The director of agriculture shall have the right to inspect any macaroni factory for which a permit has been issued under this chapter to determine whether or not the premises are constructed, equipped and operated in accordance with the requirements of this chapter and of all

other laws of this state applicable either to macaroni factories or macaroni products, and of all regulations effective thereunder. Such inspection shall also be made of each vehicle used by a macaroni factory or distributor holding a permit under this chapter in transporting or distributing any macaroni products within this state. [1939 c 190 § 18; RRS § 6294-118.]

69.16.160 Specific unlawful acts. In addition to the acts by this chapter made unlawful, it shall be unlawful in connection with the operation of any macaroni factory or the sale or distribution of any macaroni product:

(1) To sell, advertise, describe, brand, mark, label or pack macaroni or any simulation or imitation thereof in a manner which is calculated to mislead or deceive or has the tendency or capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public with respect to the grade, quality, quantity, substance, character, nature, origin, size, material content, composition, color, preparation, or manufacture of such products or in any material respect.

(2) To sell, offer for sale, advertise, describe, brand, label or otherwise represent any macaroni or noodle product as being a semolina or farina product when such is not true and correct.

(3) To use yellow coloring in, or yellow transparent containers for, any macaroni product in such manner as deceptively to import or imply to purchasers, prospective purchasers or the consuming public that such product contains egg in greater proportion than is in fact present, or in such manner as to mislead or deceive in any other respect.

(4) To advertise, describe, brand, label, or otherwise represent any product as containing a food ingredient which is not macaroni, found, or is not present in the advertised quantities, resulting in purchasers, prospective purchasers or the consuming public being misled or deceived.

(5) To use photographs, cuts, engraving, illustrations or pictorial or other adoptions or devices of industry products in catalogs, sales literature or advertisements or on packages or containers or otherwise in such manner as to have the capacity and tendency or effect of misleading or deceiving the purchaser or consuming public as to the grade, quality, quantity, substance, character, nature, origin, size, material content, composition, coloring, preparation or manufacture of such products.

(6) To fail to brand, mark or identify macaroni products so as to disclose their true character, where such failure has the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public. [1979 c 154 § 20; 1939 c 190 § 21; RRS § 6294-121.]

Severability—1979 c 154: See note following RCW 15.49.330.

69.16.170 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor. Each day such violation continues shall constitute a separate offense. [1939 c 190 § 22; RRS § 6294-122.]

69.16.900 Severability—1939 c 190. If any clause, sentence, paragraph, section or part of this chapter shall,

for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair or invalidate the remainder of this chapter but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered. [1939 c 190 § 23; RRS § 6294-123.]

Chapter 69.20 CONFECTIONS

Sections

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Honey used in candy: RCW 15.60.130.

69.20.005 Declaration of policy. It is hereby found and declared that the protection of public health and welfare requires certain control and regulation of the manufacture and distribution of candy and other confectionery products and of the persons engaged therein, in order that there may be prevented or eliminated insanitary or unhealthful conditions in connection with such manufacture and distribution which endanger public health and jeopardize the public source and supply of a nourishing, healthful food. [1939 c 112 § 1; RRS § 6294-51.]

69.20.007 Definitions. Except where the context indicates a different meaning, terms used in this chapter shall be construed as defined herein. [1939 c 112 § 2; RRS § 6294-52.]

69.20.010 "Confection" defined. The term "confection" shall mean and include any solid combination of sugar or other saccharine substance, together with fruits, nuts, chocolate, or other flavoring or coloring substances. [1939 c 112 § 3; RRS § 6294-53. FORMER PARTS OF SECTION: 1939 c 112 § 4 now codified as RCW 69.20.011; 1939 c 112 § 5 now codified as RCW 69.20.012; 1939 c 112 § 6 now codified as RCW 69.12.013; 1939 c 112 § 7 now codified as RCW 69.12.014.]

69.20.011 "Confectioner" defined. The term "confectioner" shall mean any person who prepares, processes, manufactures, sells, or distributes any confection within the state of Washington: *Provided, however,* That this definition shall not be construed to include any person selling confections exclusively at retail in a fixed place or places of business. [1939 c 112 § 4; RRS § 6294–54. Formerly RCW 69.20.010, part.]

69.20.012 "Confectionery" defined. The term "confectionery" shall mean any place, premises, or establishment where confections are regularly prepared, processed, manufactured, sold, or distributed, exclusive, however, of any place, premises, or establishment where confections are sold exclusively at retail in a fixed place or places of business. [1939 c 112 § 5; RRS § 6294–55. Formerly RCW 69.20.010, part.]

69.20.013 "Person" defined. The term "person" shall include individual, firm, corporation, association, or club. [1939 c 112 § 6; RRS § 6294–56. Formerly RCW 69.20.010, part.]

69.20.014 "Director" defined. The term "director" shall mean the director of agriculture of the state of Washington. [1939 c 112 § 7; RRS § 6294–57. Formerly RCW 69.20.010, part.]

69.20.020 Confectioner's permit—Application. No confectioner shall operate within this state without a state confectioner's permit. Application for such permit shall be made in writing, and under oath, to the director upon such forms and with such pertinent information as shall be required by him. [1939 c 112 § 8; RRS § 6294–58.]

69.20.030 Permit—Expiration—Renewal—Nontransferability. Each permit issued under this chapter shall expire on December 31st following its date of issue, unless sooner revoked for cause. Renewal may be obtained annually by surrendering to the director the previous year's permit and paying to the director the required annual permit fee. Such renewal must be obtained on or before the first day of January of each succeeding year. No permit shall be transferable nor shall it be applicable to any location other than that for which it was originally issued. [1939 c 112 § 9; RRS § 6294–59.]

69.20.040 Annual permit fee—Use of funds. There shall be paid to the director with each application for a confectioner's permit or for a renewal thereof an annual permit fee of five dollars. All such permit and renewal fees shall be deposited in the state's general fund. [1967 c 240 § 46; 1939 c 112 § 10; RRS § 6294–60.]

Severability—1967 c 240: See note following RCW 43.23.010.

Confectioners license fund abolished and funds transferred to state general fund. See 1967 c 240 §§ 47, 48.

69.20.050 Cancellation or suspension of permit. The director may cancel or suspend any permit issued under this chapter if upon investigation he determines (1) that

the permittee has violated any provisions of this chapter, or of any other law of this state relating to the manufacture or handling of any confectionery product, or any regulation effective thereunder, or (2) that the confectionery premises or any equipment used therein or in connection therewith is in an insanitary condition and the permittee has failed or refused to remedy such condition within ten days after written notice to do so from the director. [1939 c 112 § 11; RRS § 6294–61.]

69.20.060 Revocation or suspension—Hearing. No permit shall be revoked or suspended by the director until after a written statement of the grounds therefor has been served upon the permittee and he is given at least ten days within which to answer such charge. For the purpose of making an investigation or of conducting a hearing with reference to such proposed revocation or suspension the director of agriculture shall have power to conduct such hearing, administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents and testimony. [1939 c 112 § 12; RRS § 6294–62.]

69.20.070 Appeal. Within thirty days after an order revoking or suspending a permit under this chapter is made by the director, any party aggrieved thereby may appeal to the superior court of the county of his residence in this state. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director. The director shall, within twenty days after receipt of such notice of appeal, serve and file notice of appearance and such appeal shall thereupon be deemed at issue. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No bond shall be required on such appeal, but such appeal shall not stay proceedings before the director. The trial of said issues shall be by the court, and an appeal shall lie from its judgment as in other civil cases. [1939 c 112 § 13; RRS § 6294–63.]

69.20.080 Service of papers. Service as required in this chapter may be made by registered mail, return receipt requested, addressed to the permittee at the address given by him in his most recently filed application for a permit. [1939 c 112 § 14; RRS § 6294–64.]

69.20.090 Work by diseased persons prohibited. No person afflicted with any contagious or infectious disease shall work or be permitted to work or be employed in any confectionery. [1939 c 112 § 15; RRS § 6294–65. FORMER PART OF SECTION: 1939 c 112 § 16 now codified as RCW 69.20.095.]

69.20.095 Medical examination and certification of workers—Fee—Renewals. No person shall work or be permitted to work in any confectionery in storing, preparing, mixing, or handling any product or any ingredient thereof without holding a certificate from a physician, duly accredited for that purpose by the state

board of health, certifying that such person has been examined and found free from any contagious or infectious disease. The state board of health may fix a maximum fee, not exceeding two dollars, which may be charged by a physician for such examination. Such certificate shall be effective for a period of six months and thereafter must be renewed following proper physical examination as aforesaid. Where such certificate is required, and provided under municipal ordinance upon examination deemed adequate by the state board of health, certificates issued thereunder shall be sufficient under this chapter. [1939 c 112 § 16; RRS § 6294-66. Formerly RCW 69.20.090, part.]

Sunset Act application: See note following RCW 43.20.030.

69.20.100 Revocation of health certificate—Refusal to submit to examination. Any certificate issued under RCW 69.20.095 shall be revoked by the state board of health at any time the holder thereof is found, after proper physical examination, to be afflicted with any communicable or infectious disease. Refusal of any person employed in a confectionery to submit to proper and reasonable physical examination upon written demand of the state board of health shall be cause for revocation of that person's health certificate. [1939 c 112 § 17; RRS § 6294-67.]

Sunset Act application: See note following RCW 43.20.030.

69.20.110 Noxious or injurious confections forbidden. No person shall prepare, process, manufacture, sell, distribute, or handle any confection containing any wormy, moldy, verminous, noxious, harmful, injurious, or deleterious substances. [1939 c 112 § 18; RRS § 6294-68.]

69.20.120 Inspection of premises and vehicles. The director shall have the right at such time or times as he may deem advisable to make an inspection of any confectionery for which a permit has been issued under this chapter to determine whether or not the premises are constructed, equipped, and operated so as to comply with the requirements of this chapter and of all other laws applicable to either confectioneries or confectionery products, and of all regulations effective thereunder. The director shall also have the right to inspect any vehicle used by a confectioner in selling, distributing, or handling confections. [1939 c 112 § 19; RRS § 6294-69.]

69.20.150 Penalty. Any person violating any provisions of this chapter shall be guilty of a misdemeanor. Each day such violation continues shall constitute a separate offense. [1939 c 112 § 22; RRS § 6294-72.]

69.20.900 Severability—1939 c 112. If any clause, sentence, paragraph, section, or part of this chapter shall, for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair, or invalidate the remainder of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered. The legislature hereby declares that it would have passed this

chapter, and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases be declared unconstitutional. [1939 c 112 § 23; RRS § 6294-73.]

Chapter 69.25

WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

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69.25.010 Legislative finding. Eggs and egg products are an important source of the state's total supply of food, and are used in food in various forms. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential, in the public interest, that the health and welfare of consumers be protected by the adoption of measures prescribed herein for assuring that eggs and egg products distributed to them and used in products consumed by them are wholesome, otherwise not adulterated, and properly labeled and packaged. Lack of effective regulation for the handling or disposition of unwholesome, otherwise adulterated, or improperly labeled or packaged egg products and certain qualities of eggs is injurious to the public welfare and destroys markets for wholesome, unadulterated, and properly labeled and packaged eggs and egg products and results in sundry losses to producers and processors, as well as injury to consumers. Unwholesome, otherwise adulterated, or improperly labeled or packaged products can be sold at lower prices and compete unfairly with the wholesome, unadulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that all egg products and the qualities of eggs which are regulated under this chapter are either in intrastate commerce, or substantially affect such commerce, and that regulation by the director, as contemplated by this chapter, is appropriate to protect the health and welfare of consumers. [1975 1st ex.s. c 201 § 2.]

69.25.020 Definitions. When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396, as enacted or hereafter amended: *Provided*, That an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(h) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(i) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(j) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(k) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer,

retailer or consumer: *Provided*, That for the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other specie of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (ad-dled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place. [1975 1st ex.s. c 201 § 3.]

69.25.030 Purpose—Certain federal rules adopted by reference—Hearing, notice by director—Adoption of rules by director. The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal egg products inspection act, 21 U.S.C. sec. 1031, et seq., and regulations adopted thereunder. In accord with such declared purpose, any regulations adopted under the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), in effect on July 1, 1975, are hereby deemed to have been adopted under the provisions hereof. Further, to promote such uniformity, any regulations adopted hereafter under the provisions of the federal egg products inspection act relating

to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), and published in the federal register, shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.04 RCW, as now or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal egg products inspection act, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.04 RCW, as now or hereafter amended.

The director, in addition to the foregoing, may adopt any rule and regulation necessary to carry out the purpose and provisions of this chapter. [1975 1st ex.s. c 201 § 4.]

69.25.040 Application of administrative procedure act. The adoption, amendment, modification, or revocation of any rules or regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued or denied under the provisions of this chapter, shall be subject to the applicable provisions of chapter 34.04 RCW, the administrative procedure act, as now or hereafter amended. [1975 1st ex.s. c 201 § 5.]

69.25.050 Egg handler's or dealer's license and number—Application, fee, posting required, procedure. No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department; such license shall expire on the thirtieth day of June following issuance. Application for a license shall be on a form prescribed by the director and accompanied by a ten dollar annual license fee. Duplicate copies of the license may be issued upon payment of five dollars. A copy of said license shall be posted at each location where such licensee operates. Such application shall include the full name of the applicant for the license and the location of each facility he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director. Upon the approval of the application and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. Such license and permanent egg handler or dealer's number shall be nontransferable. [1975 1st ex.s. c 201 § 6.]

69.25.060 Egg handler's or dealer's license—Late renewal fee—Exceptions. If the application for the renewal of an egg handler's or dealer's license is not filed before July 1st of any year, an additional fee of five

dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he has not acted as an egg handler or dealer subsequent to the expiration of his license. [1975 1st ex.s. c 201 § 7.]

69.25.070 Egg handler's or dealer's license—Denial, suspension, revocation, or conditional issuance. The department may deny, suspend, revoke, or issue a license or a conditional license if it determines that an applicant or licensee has committed any of the following acts:

(1) That the applicant or licensee is violating or has violated any of the provisions of this chapter or rules and regulations adopted thereunder.

(2) That the application contains any materially false or misleading statement or involves any misrepresentation by any officer, agent, or employee of the applicant.

(3) That the applicant or licensee has concealed or withheld any facts regarding any violation of this chapter by any officer, agent, or employee of the applicant or licensee. [1975 1st ex.s. c 201 § 8.]

69.25.080 Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers. (1) For the purpose of preventing the entry into or movement in intrastate commerce of any egg product which is capable of use as human food and is misbranded or adulterated, the director shall, whenever processing operations are being conducted, unless under inspection by the United States department of agriculture, cause continuous inspection to be made, in accordance with the regulations promulgated under this chapter, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under RCW 69.25.170. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of RCW 69.25.170(1)(a) in the preparation of any articles for human food, shall be deemed to be a plant processing egg products, with respect to such operations.

(2) The director, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

(3) Eggs and egg products found to be adulterated at official plants shall be condemned, and if no appeal be taken from such determination or condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: *Provided*, That articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the

cost of the appellant if the director determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

(4) The director shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under RCW 69.25.140, as he deems appropriate (and in the case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of RCW 69.25.140, except that the director shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of the director shall be afforded access to all such places of business for purposes of making the inspections provided for in this chapter. [1975 1st ex.s. c 201 § 9.]

69.25.090 Sanitary operation of official plants—Inspection refused if requirements not met. (1) The operator of each official plant shall operate such plant in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the director to effectuate the purposes of this chapter, including requirements for segregation and disposition of restricted eggs.

(2) The director shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. [1975 1st ex.s. c 201 § 10.]

69.25.100 Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal. (1) Egg products inspected at any official plant under the authority of this chapter and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the director, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations of the director, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the director may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

(2) No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the director. If the director has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling

or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the director, such person may request a hearing, but the use of the labeling or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business. [1975 1st ex.s. c 201 § 11.]

69.25.110 Prohibited acts and practices. (1) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in any business in intrastate commerce any restricted eggs, capable of use as human food, except as authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(2) No egg handler shall possess with intent to use, or use, any restricted eggs in the preparation of human food for intrastate commerce except that such eggs may be so possessed and used when authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(3) No person shall process any egg products for intrastate commerce at any plant except in compliance with the requirements of this chapter.

(4) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in intrastate commerce any egg products required to be inspected under this chapter unless they have been so inspected and are labeled and packaged in accordance with the requirements of RCW 69.25.100.

(5) No operator of any official plant shall allow any egg products to be moved from such plant if they are adulterated or misbranded and capable of use as human food.

(6) No person shall:

(a) Manufacture, cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director;

(b) Forge or alter any official device, mark, or certificate;

(c) Without authorization from the director, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark; or use any labeling or container ordered to be withheld from use under RCW 69.25.100 after final judicial affirmance of such order or expiration of the time for appeal if no appeal is taken under said section;

(d) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(e) Knowingly possess, without promptly notifying the director or his representative, any official device or any

counterfeit, simulated, forged, or improperly altered official certificate or any device or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;

(f) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director;

(g) Knowingly represent that any article has been inspected or exempted, under this chapter when in fact it has not been so inspected or exempted; and

(h) Refuse access, at any reasonable time, to any representative of the director, to any plant or other place of business subject to inspection under any provisions of this chapter.

(7) No person, while an official or employee of the state or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States government or the state in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which the originator or relator of such information claims to be entitled to protection as a trade secret. [1975 1st ex.s. c 201 § 12.]

69.25.120 Director to cooperate with other agencies—May conduct examinations. The director shall, whenever he determines that it would effectuate the purposes of this chapter, cooperate with any state, federal or other governmental agencies in carrying out any provisions of this chapter. In carrying out the provisions of this chapter, the director may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose. [1975 1st ex.s. c 201 § 13.]

69.25.130 Eggs or egg products not intended for use as human food—Identification or denaturing required. Inspection shall not be provided under this chapter at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in intrastate commerce, shall be denatured or identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in intrastate commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or identified as required by the regulations of the director. [1975 1st ex.s. c 201 § 14.]

69.25.140 Records required, access to and copying of. For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in intrastate commerce or in interstate commerce, or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form

and manner, as the director may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of the director, permit him at reasonable times to have access to and to copy all such records. [1975 1st ex.s. c 201 § 15.]

69.25.150 Penalties—Liability of employer—Defense—Interference with person performing official duties. (1) Any person who commits any offense prohibited by RCW 69.25.110 shall upon conviction be guilty of a gross misdemeanor. When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(2) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of RCW 69.25.140, or subsection (3) of this section, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman.

(3) Notwithstanding any other provision of law any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be punished by a fine of not more than five thousand dollars or imprisonment in the state penitentiary for not more than three years, or both. Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state penitentiary for not more than ten years, or both. [1975 1st ex.s. c 201 § 16.]

69.25.160 Notice of violation—May take place of prosecution. Before any violation of this chapter, other than RCW 69.25.150(3), is reported by the director to any prosecuting attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violation of this chapter whenever he believes that the public interest will be adequately served and compliance

with this chapter obtained by a suitable written notice of warning. [1975 1st ex.s. c 201 § 17.]

69.25.170 Exemptions permitted by rule of director.

(1) The director may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter:

(a) The sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the tolerance in the official state standards for consumer grades for shell eggs;

(b) The processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the director, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of the state consumer grades for shell eggs, and the egg products processed at such plant;

(c) The sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(d) The sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection.

(2) The director may modify or revoke any regulation granting exemption under this chapter whenever he deems such action appropriate to effectuate the purposes of this chapter. [1975 1st ex.s. c 201 § 18.]

69.25.180 Limiting entry of eggs and egg products into official plants. The director may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may prescribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this chapter. [1975 1st ex.s. c 201 § 19.]

69.25.190 Embargo of eggs or egg products in violation of this chapter—Time limit—Removal of official marks. Whenever any eggs or egg products subject to this chapter are found by any authorized representative of the director upon any premises and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this chapter, or that they are in any other way in violation of this chapter, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the director, such articles may be embargoed by such representative for a reasonable period but not to exceed twenty days, pending action under RCW 69.25.200 or notification of any federal or other governmental authorities having jurisdiction over such articles, and shall not be moved by any

person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the director that the articles are eligible to retain such marks. [1975 1st ex.s. c 201 § 20.]

69.25.200 Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required. When the director has embargoed any eggs or egg products, he shall petition the superior court of the county in which the eggs or egg products are located for an order affirming such embargo. Such court shall have jurisdiction for cause shown and after a prompt hearing to any claimant of eggs or egg products, shall issue an order which directs the removal of such embargo or the destruction or correction and release of such eggs and egg products. An order for destruction or the correction and release of such eggs and egg products shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond as the court finds indicated in the circumstance. [1975 1st ex.s. c 201 § 21.]

69.25.210 Embargo—Order affirming not required, when. The director need not petition the superior court as provided for in RCW 69.25.200 if the owner or claimant of such eggs or egg products agrees in writing to the disposition of such eggs or egg products as the director may order. [1975 1st ex.s. c 201 § 22.]

69.25.220 Embargo—Consolidation of petitions. Two or more petitions under RCW 69.25.200 which pend at the same time and which present the same issue and claimant hereunder may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or claimant. [1975 1st ex.s. c 201 § 23.]

69.25.230 Embargo—Sampling of article. The claimant in any proceeding by petition under RCW 69.25.200 shall be entitled to receive a representative sample of the article subject to such proceedings upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 201 § 24.]

69.25.240 Condemnation—Recovery of damages restricted. No state court shall allow the recovery of damages for administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 201 § 25.]

69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency. There is hereby levied an assessment not to exceed two and one-

half mills per dozen eggs entering intrastate commerce, as prescribed by rules and regulations issued by the director. Such assessment shall be applicable to all eggs entering intrastate commerce except as provided in RCW 69.25.170 and 69.25.290. Such assessment shall be paid to the director on a monthly basis on or before the tenth day following the month such eggs enter intrastate commerce. The director may require reports by egg handlers or dealers along with the payment of the assessment fee. Such reports may include any and all pertinent information necessary to carry out the purposes of this chapter. The director may, by regulations, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's license number. [1975 1st ex.s. c 201 § 26.]

69.25.260 Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers or labels. Any egg handler or dealer may prepay the assessment provided for in RCW 69.25.250 by purchasing Washington state egg seals from the director to be placed on egg containers showing that the proper assessment has been paid. Any carton manufacturer or printer may apply to the director for a permit to place reasonable facsimiles of the Washington state egg seals to be imprinted on egg containers or on the identification labels which show egg grade and size and the name of the egg handler or dealer. The director shall, from time to time, prescribe rules and regulations governing the affixing of seals and he is authorized to cancel any such permit issued pursuant to this chapter, whenever he finds that a violation of the terms under which the permit has been granted has been violated. [1979 1st ex.s. c 238 § 10; 1975 1st ex.s. c 201 § 27.]

Severability—1979 1st ex.s. c 238: See note following RCW 15.44.010.

69.25.270 Assessment—Monthly payment—Audit—Failure to pay, penalty. Every egg handler or dealer who pays assessments required under the provisions of this chapter on a monthly basis in lieu of seals shall be subject to audit by the director on an annual basis or more frequently if necessary. The cost to the director for performing such audit shall be chargeable to and payable by the egg handler or dealer subject to audit. Failure to pay assessments when due or refusal to pay for audit costs may be cause for a summary suspension of an egg handler's or dealer's license and a charge of one percent per month, or fraction thereof shall be added to the sum due the director, for each remittance not received by the director when due. The conditions and charges applicable to egg handlers and dealers set forth herein shall also be applicable to payments due the director for facsimiles of seals placed on egg containers. [1975 1st ex.s. c 201 § 28.]

69.25.280 Assessment—Use of proceeds. The proceeds from assessment fees paid to the director shall be retained for the inspection of eggs and carrying out the provisions of this chapter relating to eggs. [1975 1st ex.s. c 201 § 29.]

69.25.290 Assessment—Exclusions. The assessments provided in this chapter shall not apply to:

- (1) Sale and shipment to points outside of this state;
- (2) Sale to the United States government and its instrumentalities;
- (3) Sale to breaking plants for processing into egg products;
- (4) Sale between egg dealers. [1975 1st ex.s. c 201 § 30.]

69.25.300 Transfer of moneys in state egg account. All moneys in the state egg account, created by *RCW 69.24.450, at the time of July 1, 1975, shall be transferred to the director and shall be retained and expended for administering and carrying out the purposes of this chapter. [1975 1st ex.s. c 201 § 31.]

*Reviser's note: RCW 69.24.450 was repealed by 1975 1st ex.s. c 201 § 40.

69.25.310 Containers—Marking required—Obliteration of previous markings required for reuse—Penalty. All containers used by an egg handler or dealer to package eggs shall bear the name and address or the permanent number issued by the director to said egg handler or dealer. Such permanent number shall be displayed in a size and location prescribed by the director. It shall constitute a gross misdemeanor for any egg handler or dealer to reuse a container which bears the permanent number of another egg handler or dealer unless such number is totally obliterated prior to reuse. The director may in addition require the obliteration of any or all markings that may be on any container which will be reused for eggs by an egg handler or dealer. [1975 1st ex.s. c 201 § 32.]

69.25.320 Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time. In addition to any other records required to be kept and furnished the director under the provisions of this chapter, the director may require any person who sells to any retailer, or to any restaurant, hotel, boarding house, bakery, or any institution or concern which purchases eggs for serving to guests or patrons thereof or for its use in preparation of any food product for human consumption, candled or graded eggs other than those of his own production sold and delivered on the premises where produced, to furnish that retailer or other purchaser with an invoice covering each such sale, showing the exact grade or quality, and the size or weight of the eggs sold, according to the standards prescribed by the director, together with the name and address of the person by whom the eggs were sold. The person selling and the retailer or other purchaser shall keep a copy of said invoice on file at his place of business for a period of thirty days, during which time the copy shall be available for inspection at all reasonable times by the director: *Provided*, That no retailer or other purchaser shall be guilty of a violation of this chapter if he can establish a guarantee from the person from whom the eggs were

purchased to the effect that they, at the time of purchase, conformed to the information required by the director on such invoice: *Provided further*, That if the retailer or other purchaser having labeled any such eggs in accordance with the invoice keeps them for such a time after they are purchased as to cause them to deteriorate to a lower grade or standard, and sells them under the label of the invoice grade or standard, he shall be guilty of a violation of this chapter.

No invoice shall be required on eggs when packed for sale to the United States department of defense, or a component thereof, if labeled with grades promulgated by the United States secretary of agriculture. [1975 1st ex.s. c 201 § 33.]

69.25.330 Exemption from chapter. The provisions of this chapter shall not apply to the sale of eggs by any egg producer with an annual egg production from a flock of three thousand or less hens. [1975 1st ex.s. c 201 § 34.]

69.25.340 General penalty. Any person violating any provision of this chapter or regulations for which a penalty is not specifically provided for in this chapter, shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1975 1st ex.s. c 201 § 36.]

69.25.900 Savings. The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1975. [1975 1st ex.s. c 201 § 35.]

69.25.910 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy at law. [1975 1st ex.s. c 201 § 37.]

69.25.920 Severability—1975 1st ex.s. c 201. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 201 § 38.]

69.25.930 Short title. This act may be known and cited as the "Washington wholesome eggs and egg products act". [1975 1st ex.s. c 201 § 39.]

Chapter 69.28 HONEY

Sections

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Agricultural cooperative associations: Chapter 24.32 RCW.

Bees and apiaries: Chapter 15.60 RCW.

Bees as a personal exemption: RCW 6.16.020.

Commission merchants, agricultural products: Title 20 RCW.

69.28.020 Enforcement power and duty of director and agents. The director is hereby empowered, through his duly authorized agents, to enforce all provisions of this chapter. The director shall have the power to define, promulgate and enforce such reasonable regulations as he may deem necessary in carrying out the provisions of this chapter. [1939 c 199 § 29; RRS § 6163–29. FORMER PART OF SECTION: 1939 c 199 § 44 now codified as RCW 69.28.025.]

69.28.025 Rules and regulations have force of law. Any rules or regulations promulgated and published by the director under the provisions of this chapter shall have the force and effect of law. [1939 c 199 § 44; RRS § 6163–44. Formerly RCW 69.28.020, part.]

69.28.030 Rules prescribing standards. The director is hereby authorized, and it shall be his duty, upon the taking effect of this chapter and from time to time thereafter, to adopt, establish and promulgate reasonable rules and regulations specifying grades or standards of quality governing the sale of honey: *Provided*, That, in the interest of uniformity, such grades and standards of quality shall conform as nearly to those established by the United States department of agriculture as local conditions will permit. [1939 c 199 § 24; RRS § 6163-24.]

69.28.040 Right to enter, inspect, and take samples. The director or any of his duly authorized agents shall have the power to enter and inspect at reasonable times every place, vehicle, plant or other place where honey is being produced, stored, packed, transported, exposed, or offered for sale, and to inspect all such honey and the containers thereof and to take for inspection such samples of said honey as may be necessary. [1939 c 199 § 28; RRS § 6163-28.]

69.28.050 Containers to be labeled. It shall be unlawful to deliver for shipment, ship, transport, sell, expose or offer for sale any containers or subcontainers of honey within this state unless they shall be conspicuously marked with the name and address of the producer or distributor, the net weight of the honey, the grade of the honey, and, if imported from any foreign country, the name of the country or territory from which the said honey was imported, or if a blend of honey, any part of which is foreign honey, the container must be labeled with the name of the country or territory where such honey was produced and the proportion of each foreign honey used in the blend. [1939 c 199 § 32; RRS § 6163-32.]

69.28.060 Requisites of markings. When any markings are used or required to be used under this chapter on any container of honey to identify the container or describe the contents thereof, such markings must be plainly and conspicuously marked, stamped, stenciled, printed, labeled or branded in the English language, in letters large enough to be discernible by any person, on the front, side or top of any container. [1939 c 199 § 35; RRS § 6163-35.]

69.28.070 "Marked" defined—When honey need not be marked. The term "marked" shall mean printed in the English language on the top, front or side of any container containing honey: *Provided*, That it shall not be necessary to mark honey sold by the producer thereof to any distributor, packer or manufacturer with the net weight, color or grade if the honey is to be used in the manufacture of honey products or is to be graded and packaged by the distributor or packer for resale. [1939 c 199 § 21; RRS § 6163-21.]

69.28.080 Purchaser to be advised of standards—Exceptions. It shall be unlawful for any person to deliver, sell, offer, or expose for sale any honey for human

consumption within the state without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality of such honey, according to the standards prescribed by the director, by stamping or printing on the container of any such honey such grade or quality: *Provided*, This section shall not apply to honey while it is in transit in intrastate commerce from one establishment to the other, to be processed, labeled, or repacked. [1961 c 60 § 1; 1957 c 103 § 1; 1949 c 105 § 6; 1939 c 199 § 39; Rem. Supp. 1949 § 6163-39.]

69.28.090 Forgery, simulation, etc., of marks, labels, etc., unlawful. It shall be unlawful to forge, counterfeit, simulate, falsely represent or alter without proper authority any mark, stamp, tab, label, seal, sticker or other identification device provided by this chapter. [1961 c 60 § 2; 1939 c 199 § 40; RRS § 6163-40. FORMER PART OF SECTION: 1939 c 199 § 41 now codified as RCW 69.28.095.]

69.28.095 Unlawful mutilation or removal of seals, marks, etc., used by director. It shall be unlawful to mutilate, destroy, obliterate, or remove without proper authority, any mark, stamp, tag, label, seal, sticker or other identification device used by the director under the provisions of this chapter. [1939 c 199 § 41; RRS § 6163-41. Formerly RCW 69.28.090, part.]

69.28.100 Marks for "slack-filled" container. Any slack-filled container shall be conspicuously marked "slack-filled". [1939 c 199 § 36; RRS § 6163-36. FORMER PART OF SECTION: 1939 c 199 § 10 now codified as RCW 69.28.270.]

69.28.110 Use of used containers. It shall be unlawful to sell, offer, or expose for sale to the consumer any honey in any second-hand or used containers which formerly contained honey, unless all markings as to grade, name and weight have been obliterated, removed or erased. [1939 c 199 § 37; RRS § 6163-37.]

69.28.120 Floral source labels. Any honey which is a blend of two or more floral types of honey shall not be labeled as a honey product from any one particular floral source alone. [1939 c 199 § 34; RRS § 6163-34.]

69.28.130 Adulterated honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any adulterated honey as honey. [1939 c 199 § 26; RRS § 6163-26. FORMER PART OF SECTION: 1939 c 199 §§ 27 and 33 now codified as RCW 69.28.133 and 69.28.135.]

69.28.133 Nonconforming honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any honey which does not conform to the provisions of this chapter or any regulation promulgated by the director under this chapter. [1939 c 199 § 27; RRS § 6163-27. Formerly RCW 69.28.130, part.]

69.28.135 Warning-tagged honey—Movement prohibited. It shall be unlawful to move any honey or

containers of honey to which any warning tag or notice has been affixed except under authority from the director. [1939 c 199 § 33; RRS § 6163-33. Formerly RCW 69.28.130, part.]

69.28.140 Possession of unlawful honey as evidence. Possession by any person, of any honey which is sold, exposed or offered for sale in violation of this chapter shall be prima facie evidence that the same is kept or shipped to the said person, in violation of the provisions of this chapter. [1939 c 199 § 30; RRS § 6163-30.]

69.28.170 Inspectors—Prosecutions. It shall be the duty of the director to enforce this chapter and to appoint and employment [employ] such inspectors as may be necessary therefor. The director shall notify the prosecuting attorneys for the counties of the state of violations of this chapter occurring in their respective counties, and it shall be the duty of the respective prosecuting attorneys immediately to institute and prosecute proceeding in their respective counties and to enforce the penalties provided for by this chapter. [1939 c 199 § 43; RRS § 6163-43.]

69.28.180 Violation of rules and regulations unlawful. It shall be unlawful for any person to violate any rule or regulation promulgated by the director under the provisions of this chapter. [1939 c 199 § 25; RRS § 6163-25. FORMER PART OF SECTION: 1939 c 199 § 44 now codified in RCW 69.28.185.]

69.28.185 Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon violation thereof shall be punishable by a fine of not more than five hundred dollars or imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment. [1939 c 199 § 42; RRS § 6163-42. Formerly RCW 69.28.180, part.]

69.28.190 "Director" defined. The term "director" means the director of agriculture of the state of Washington or his duly authorized representative. [1939 c 199 § 2; RRS § 6163-2. Formerly RCW 69.28.010, part.]

69.28.200 "Container" defined. The term "container" shall mean any box, crate, chest, carton, barrel, keg, bottle, jar, can or any other receptacle containing honey. [1939 c 199 § 3; RRS § 6163-3.]

69.28.210 "Subcontainer" defined. The term "subcontainer" shall mean any section box or other receptacle used within a container. [1939 c 199 § 4; RRS § 6163-4.]

69.28.220 "Section box" defined. The term "section box" shall mean the wood or other frame in which bees have built a small comb of honey. [1939 c 199 § 5; RRS § 6163-5.]

69.28.230 "Clean and sound containers" defined. The term "clean and sound containers" shall mean containers which are virtually free from rust, stains or leaks. [1939 c 199 § 6; RRS § 6163-6.]

69.28.240 "Pack", "packing", or "packed" defined. The term "pack", "packing", or "packed" shall mean the arrangement of all or part of the subcontainers in any container. [1939 c 199 § 7; RRS § 6163-7.]

69.28.250 "Label" defined. The term "label" shall mean a display of written, printed or graphic matter upon the immediate container of any article. [1939 c 199 § 8; RRS § 6163-8.]

69.28.260 "Person" defined. The term "person" includes individual, partnership, corporation and/or association. [1939 c 199 § 9; RRS § 6163-9.]

69.28.270 "Slack-filled" defined. The term "slack-filled" shall mean that the contents of any container occupy less than ninety-five percent of the volume of the closed container. [1939 c 199 § 10; RRS § 6163-10. Formerly RCW 69.28.100, part.]

69.28.280 "Deceptive arrangement" defined. The term "deceptive arrangement" shall mean any lot or load, arrangement or display of honey which has in any exposed surface, honey which is so superior in quality, appearance or condition, or in any other respects, to any of that which is concealed or unexposed as to materially misrepresent any part of the lot, load, arrangement or display. [1939 c 199 § 11; RRS § 6163-11.]

69.28.290 "Misabeled" defined. The term "misabeled" shall mean the placing or presence of any false or misleading statement, design or device upon, or in connection with, any container or lot of honey, or upon the label, lining or wrapper of any such container, or any placard used in connection therewith, and having reference to such honey. A statement, design or device is false and misleading when the honey to which it refers does not conform in every respect to such statement. [1939 c 199 § 12; RRS § 6163-12.]

69.28.300 "Placard" defined. The term "placard" means any sign, label or designation, other than an oral designation, used with any honey as a description or identification thereof. [1939 c 199 § 13; RRS § 6163-13.]

69.28.310 "Honey" defined. The term "honey" as used herein is the nectar of floral exudations of plants, gathered and stored in the comb by honey bees (*apis mellifica*). It is laevo-rotatory, contains not more than twenty-five percent of water, not more than twenty-five one-hundredths of one percent of ash, not more than eight percent of sucrose, its specific gravity is 1.412, its weight not less than eleven pounds twelve ounces per standard gallon of 231 cubic inches at sixty-eight degrees Fahrenheit. [1939 c 199 § 14; RRS § 6163-14. Formerly RCW 69.28.010, part.]

69.28.320 "Comb-honey" defined. The term "comb-honey" means honey which has not been extracted from the comb. [1939 c 199 § 15; RRS § 6163-15.]

69.28.330 "Extracted honey" defined. The term "extracted honey" means honey which has been removed from the comb. [1939 c 199 § 16; RRS § 6163-16.]

69.28.340 "Crystallized honey" defined. The term "crystallized honey" means honey which has assumed a solid form due to the crystallization of one or more of the natural sugars therein. [1939 c 199 § 17; RRS § 6163-17.]

69.28.350 "Honeydew" defined. The term "honeydew" is the saccharine exudation of plants, other than nectarous exudations, gathered and stored in the comb by honey bees (*apis mellifica*) and is dextrorotatory. [1939 c 199 § 18; RRS § 6163-18. Formerly RCW 69-28.010, part.]

69.28.360 "Foreign material" defined. The term "foreign material" means pollen, wax particles, insects, or materials not deposited by bees. [1937 c 199 § 19; RRS § 6163-19.]

69.28.370 "Foreign honey" defined. The term "foreign honey" means any honey not produced within the continental United States. [1939 c 199 § 20; RRS § 6163-20.]

69.28.380 "Adulterated honey" defined. The term "adulterated honey" means any honey to which has been added honeydew, glucose, dextrose, molasses, sugar, sugar syrup, invert sugar, or any other similar product or products, other than the nectar of floral exudations of plants gathered and stored in the comb by honey bees. [1939 c 199 § 22; RRS § 6163-22. Formerly RCW 69-28.010, part.]

69.28.390 "Serious damage" defined. The term "serious damage" means any injury or defect that seriously affects the edibility or shipping quality of the honey. [1939 c 199 § 23; RRS § 6163-23.]

69.28.400 Labeling requirements for artificial honey or mixtures containing honey. (1) No person shall sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey branded exclusively as "honey", "liquid or extracted honey", "strained honey" or "pure honey".

(2) No person, firm, association, company or corporation shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled exclusively as honey which shall be made up of honey mixed with any other substance or ingredient.

(3) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed in imitation or semblance of honey, the product shall be labeled with the word "artificial" or "imitation" in the same type size and style as the word "honey";

(4) Whenever any substance or commodity is to be marketed in imitation or semblance of honey, but contains no honey, the product shall not be branded or labeled with the word "honey" and/or depict thereon a picture or drawing of a bee, bee hive, or honeycomb;

(5) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed, there shall be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are the other ingredients; nor shall such compound or mixture be branded or labeled exclusively with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled exclusively with the word "honey", unless such article is pure honey. [1975 1st ex.s. c 283 § 1.]

69.28.410 Embargo on honey or product—Notice by director—Removal. Whenever the director shall find, or shall have probable cause to believe, that any honey or product subject to the provisions of this chapter, as now or hereafter amended, is in intrastate commerce, which was introduced into such intrastate commerce in violation of the provisions of this chapter, as now or hereafter amended, he is hereby authorized to affix to such honey or product a notice placing an embargo on such honey or product, and prohibiting its sale in intrastate commerce, and no person shall move or sell such honey or product without first receiving permission from the director to move or sell such honey or product. But if, after such honey or product has been embargoed, the director shall find that such honey or product does not involve a violation of this chapter, as now or hereafter amended, such embargo shall be forthwith removed. [1975 1st ex.s. c 283 § 3.]

69.28.420 Embargo on honey or product—Court order affirming, required—Order for destruction or correction and release—Bond. When the director has embargoed any honey or product he shall, no later than twenty days after the affixing of notice of its embargo, petition the superior court for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such honey or product, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such honey or product. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the court finds indicated in the circumstances. [1975 1st ex.s. c 283 § 4.]

69.28.430 Consolidation of petitions presenting same issue and claimant. Two or more petitions under this chapter, as now or hereafter amended, which pend at the

same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1975 1st ex.s. c 283 § 5.]

69.28.440 Sample of honey or product may be obtained—Procedure. The claimant in any proceeding by petition under this chapter, as now or hereafter amended, shall be entitled to receive a representative sample of the honey or product subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 283 § 6.]

69.28.450 Recovery of damages barred if probable cause for embargo. No state court shall allow the recovery of damages for embargo under this chapter, as now or hereafter amended, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 283 § 7.]

69.28.900 Severability—1939 c 199. If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses and phrases be declared unconstitutional. [1939 c 199 § 45; RRS § 6163-45.]

69.28.910 Short title. This chapter may be known and cited as the Washington state honey act. [1939 c 199 § 1; RRS § 6163-1.]

Chapter 69.30

SANITARY CONTROL OF SHELLFISH

Sections

69.30.010	Definitions.
69.30.020	Certificate of compliance required for sale.
69.30.030	Rules and regulations—Duties of state board of health.
69.30.050	Certificates of approval—Shellfish growing areas.
69.30.060	Certificates of approval—Culling, shucking, packing establishments.
69.30.070	Certificates of approval—Compliance with other laws and rules required.
69.30.080	Certificates of approval—Denial or revocation—Procedure.
69.30.090	Certificates of approval—Appeal from secretary's decision.
69.30.100	Certificates of approval—Decision effective during appeal.
69.30.110	Sale in violation of chapter—Withdrawal—Enforcement.
69.30.120	Inspection by department.
69.30.130	Water pollution laws and rules applicable.

69.30.140	Penalties.
69.30.900	Severability—1955 c 144.

Shellfish: Chapter 75.24 RCW.

69.30.010 Definitions. When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters and clams, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting for sale for human consumption.

(4) "Establishment" means the buildings together with the necessary equipment and appurtenances used for the storage, culling, shucking, packing and/or shipping of shellfish for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation and/or association.

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

(7) "Secretary" means the secretary of social and health services or his authorized representatives. [1979 c 141 § 70; 1955 c 144 § 1.]

69.30.020 Certificate of compliance required for sale. Only shellfish bearing a certificate of compliance with the sanitary requirements of this state or a state, territory, province or country of origin whose requirements are equal or comparable to those established pursuant to this chapter may be sold or offered for sale in the state of Washington. [1955 c 144 § 2.]

69.30.030 Rules and regulations—Duties of state board of health. The state board of health shall cause such investigations to be made as are necessary to determine reasonable requirements governing the sanitation of shellfish growing areas and shellfish plant facilities and operations, in order to protect public health and carry out the provisions of this chapter; and shall adopt such requirements as rules and regulations of the state board of health. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish and the identification of containers. [1955 c 144 § 3.]

Sunset Act application: See note following RCW 43.20.030.

69.30.050 Certificates of approval—Shellfish growing areas. Shellfish growing areas, from which shellfish are removed for sale for human consumption shall be in a safe and sanitary condition, meeting the requirements of the state board of health; and such shellfish growing areas shall be so certified by the

department. Any person desiring to remove shellfish for sale for human consumption from a growing area in the state of Washington shall first apply to the department for a certificate of approval of the growing area. The department shall cause the shellfish growing area to be inspected and if the area meets the sanitary requirements of the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and may be revoked at any time the area is found not to be in compliance with the sanitary requirements of the state board of health. [1955 c 144 § 5.]

Sunset Act application: See note following RCW 43.20.030.

69.30.060 Certificates of approval—Culling, shucking, packing establishments. No person shall cull, shuck, or pack shellfish in the state of Washington for sale for human consumption unless the establishment in which such operations are conducted has been certified by the department as meeting the requirements of the state board of health. Any person desiring to cull, shuck, or pack shellfish within the state of Washington for sale for human consumption, shall apply to the department for a certificate of approval for the establishment in which such operations will be done. The department shall cause such establishment to be inspected, and if the establishment meets the sanitary requirements of the state board of health, the department shall issue a certificate of approval. Such certificates of approval shall be issued for a period not to exceed twelve months, and may be revoked at any time the establishment or the operations are found not to be in compliance with the sanitary requirements of the state board of health. [1955 c 144 § 6.]

Sunset Act application: See note following RCW 43.20.030.

69.30.070 Certificates of approval—Compliance with other laws and rules required. Any certificate of approval issued under the provisions of this chapter shall not relieve any person from complying with the laws, rules and/or regulations of the state department of fisheries, relative to shellfish. [1955 c 144 § 7.]

69.30.080 Certificates of approval—Denial or revocation—Procedure. Any order issued by the department which denies or revokes a certificate of approval for a shellfish growing area or establishment shall be in writing and shall contain a statement of the grounds upon which said denial or revocation is based. A copy of the department's order shall be sent by registered mail to the person whose name appears on the certificate of approval or application therefor. Said order shall become final fifteen days after the date of mailing, provided the person aggrieved by such order does not, within ten days of the date of mailing of such order, apply in writing to the secretary for a fair hearing. Upon such application, the department shall fix a time for such hearing and shall give the person aggrieved a notice of the time fixed for such a hearing. The procedure governing hearings authorized by this section shall be in accordance with

rules promulgated by the state board of health. The secretary shall render his decision affirming, modifying or setting aside the order of the department which decision in the absence of an appeal therefrom as provided by this chapter, shall become final fifteen days after the date of mailing. [1979 c 141 § 71; 1955 c 144 § 8.]

69.30.090 Certificates of approval—Appeal from secretary's decision. Within ten days after the date of mailing of the decision of the secretary, the person aggrieved may appeal to the superior court of the county in which the shellfish growing area or establishment is located or to be located and such appeal shall be heard as a case in equity, but upon such appeal only such issues of law may be raised as were properly included in the hearings before the secretary. Proceedings of every such appeal shall be informal and summary, but full opportunity to be heard upon the issues of law shall be had before judgment is pronounced. Such appeal shall be perfected by serving a notice of appeal on the department and by filing the notice of appeal together with proof of service thereof with the clerk of the court. The service and filing, together with proof of service of the notice of appeal, all within ten days shall be jurisdictional. The department shall within ten days after receipt of such notice of appeal serve and file a notice of appearance upon appellant or his attorney of record and such appeal shall thereupon be deemed at issue. The department shall serve upon the appellant and file with the clerk of the court before hearing, a certified copy of the complete record of the administrative proceedings which shall, upon being so filed, become the record in such case. The cost of transcribing the record shall be borne by the appellant in the event the secretary's decision is affirmed by the court. In the event of modification or reversal, such cost shall be borne by the department. [1979 c 141 § 72; 1955 c 144 § 9.]

69.30.100 Certificates of approval—Decision effective during appeal. Any order or decision issued by the department or secretary from which an appeal is taken, as provided in this chapter, shall have full force and effect during the appellate procedure. [1979 c 141 § 73; 1955 c 144 § 10.]

69.30.110 Sale in violation of chapter—Withdrawal—Enforcement. Any shellfish sold or offered for sale in the state, which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter, shall upon order of the secretary be immediately withdrawn from sale, use, or consumption. In the event of failure or refusal to comply with said order, the secretary may apply to the superior court of the county wherein the shellfish were found for an order directing that the person having control of said shellfish withdraw said shellfish from sale, use, or consumption, in compliance with the order of the secretary. [1979 c 141 § 74; 1955 c 144 § 11.]

69.30.120 Inspection by department. The department may enter and inspect at reasonable times any shellfish

growing area or establishment and may inspect all shellfish, and take for inspection such samples of shellfish as may reasonably be necessary to carry out the provisions of this chapter. [1955 c 144 § 12.]

69.30.130 Water pollution laws and rules applicable. All existing laws and rules and regulations governing the pollution of waters of the state shall apply in the control of pollution of shellfish growing areas. [1955 c 144 § 13.]

69.30.140 Penalties. Any person found violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars, or imprisonment not to exceed ninety days, or to both fine and imprisonment. Upon the violation of any of the provisions of this chapter, written notification shall be sent by the department to the person found in violation. Each day's operation thereafter in violation shall constitute a separate offense and shall be subject to the prescribed penalties. [1955 c 144 § 14.]

69.30.900 Severability—1955 c 144. If any provision of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of the application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1955 c 144 § 15.]

Chapter 69.32

NARCOTICS—ADDICTION

Sections

69.32.010	Definitions.
69.32.030	University of Washington and Washington State University may purchase drugs.
69.32.060	Exceptions and exemptions not required to be negated.
69.32.096	Drug control assistance unit investigative assistance for enforcement of chapter.
69.32.900	Continuation of existing law.
69.32.910	Chapter and section headings not part of law.
69.32.920	Invalidity of part of chapter not to affect remainder.
69.32.930	Repeals and saving.
69.32.940	Emergency—1959 c 27.
69.32.950	Statement of public policy.
69.32.960	Chapter is cumulative.

Bringing narcotics into institution for care of mentally ill persons, etc., a felony: RCW 72.23.300.

Controlled substances: Chapter 69.50 RCW.

Restrictions on minors entering places where narcotics used: RCW 26.28.080.

69.32.010 Definitions. The definitions contained in *RCW 69.33.220 as now or hereafter amended shall also apply to this chapter.

The term "narcotic addict" means a person who habitually uses a narcotic drug or drugs. [1959 c 27 § 69.32.010. Prior: 1951 2nd ex.s. c 22 § 22; 1923 c 47 § 2, part; RRS § 2509-2, part.]

*Reviser's note: RCW 69.33.220 was repealed by 1971 ex.s. c 308 § 69.50.606.

69.32.030 University of Washington and Washington State University may purchase drugs. Nothing herein shall make unlawful or prevent the purchase by the University of Washington and Washington State University or the proper departments thereof, of narcotic drugs and the use thereof for experimental purposes only, when purchased, owned, held, possessed and used in compliance with the acts of congress and the rules and regulations thereunder. [1977 ex.s. c 169 § 110; 1959 c 27 § 69.32.030. Prior: 1951 2nd ex.s. c 22 § 23; 1923 c 47 § 3, part; RRS § 2509-3, part.]

~~Severability—Nomenclature—Savings—1977 ex.s. c 169:~~ See notes following RCW 28B.10.016.

69.32.060 Exceptions and exemptions not required to be negated. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant. [1959 c 27 § 69.32.060. Prior: 1951 2nd ex.s. c 22 § 18; 1923 c 47 § 5; RRS § 2509-5.]

69.32.096 Drug control assistance unit investigative assistance for enforcement of chapter. See RCW 43.43.610.

69.32.900 Continuation of existing law. The provisions of this chapter insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 27 § 69.32.900.]

69.32.910 Chapter and section headings not part of law. Chapter headings, and section or subsection headings, as used in this chapter do not constitute any part of the law. [1959 c 27 § 69.32.910.]

69.32.920 Invalidity of part of chapter not to affect remainder. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1959 c 27 § 69.32.920.]

69.32.930 Repeals and saving. The following acts or parts of acts are repealed:

- (1) Chapter 47, Laws of 1923;
- (2) Sections 18, 22, and 23, chapter 22, Laws of 1951 second extraordinary session;
- (3) Section 1, chapter 88, Laws of 1953.

Such repeals shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor any rule, regulation or order adopted pursuant thereto, nor as affecting any proceeding instituted thereunder. [1959 c 27 § 69.32.930.]

69.32.940 Emergency—1959 c 27. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 27 § 69.32.940.]

69.32.950 Statement of public policy. The habitual use of opium, morphine, cocaine, alkaloid cocaine, coca leaves or alpha or beta eucaine, their derivatives and other habit-forming drugs *hereinafter named is detrimental and dangerous to the individual and to public safety, health and morals. [1959 c 27 § 69.32.950. Prior: 1923 c 47 § 1; RRS § 2509-1.]

*Reviser's note: "[H]ereinafter named" referred to chapter 69.33 RCW, "Uniform Narcotic Drug Act," which was repealed by 1971 ex.s. c 308 § 69.50.606.

69.32.960 Chapter is cumulative. The provisions of this chapter shall be cumulative with and additional to the existing laws and regulations and nothing herein contained shall abridge or limit the powers of health authorities as construed by the supreme court of the state of Washington, except as herein otherwise provided. [1959 c 27 § 69.32.960.]

Chapter 69.36

WASHINGTON CAUSTIC POISON ACT OF 1929

Sections

69.36.010	Definitions.
69.36.020	Misbranded sales, etc., prohibited—Exceptions.
69.36.030	Condemnation of misbranded packages.
69.36.040	Enforcement—Approval of labels.
69.36.050	Duty to prosecute.
69.36.060	Penalty.
69.36.070	Short title.

Highway transportation of poisons, corrosives, etc.: RCW 46.48.170 through 46.48.190.

69.36.010 Definitions. In this chapter, unless the context or subject matter otherwise requires,

(1) The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percent or more; (b) Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H₂SO₄) in concentration of ten percent or more; (c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO₃) in a concentration of five percent or more; (d) Carboic acid (C₆H₅OH), otherwise known as phenol, and any preparation containing carboic acid in a concentration of five percent or more; (e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H₂C₂O₄) in a concentration of ten percent or more; (f) Any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percent or more; (g) Acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC₂H₃O₂) in a

concentration of twenty percent or more; (h) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percent or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percent or more; (j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten percent or more; (k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO₃) in a concentration of five percent or more, and (l) Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH₃), including ammonium hydroxide and "harts-horn", in a concentration of five percent or more.

(2) The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "POISON", running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance; *Provided*, That such directions need not appear on labels or stickers on parcels, packages or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use. *Provided further*, That this chapter is not to be construed as applying to any substance subject to the chapter, sold at wholesale or retail for use by a retail druggist in filling prescriptions or in dispensing, in pursuance of a prescription by a physician, dentist, or veterinarian; or for use by or under the direction of a physician, dentist, or veterinarian; or for use by a chemist in the practice or teaching of his profession; or for any industrial or professional use, or for use in any of the arts and sciences. [1929 c 82 § 1; RRS § 2508-1. Formerly RCW 69.36-.010 and 69.36.020, part.]

69.36.020 Misbranded sales, etc., prohibited—Exceptions. No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange, in this state any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use; *Provided*, That household products for cleaning and washing purposes, subject to this chapter and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesale or retail; *Provided further*, That

no person shall be liable to prosecution and conviction under this chapter when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this chapter. No person in this state shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this chapter. [1929 c 82 § 2; RRS § 2508-2. FORMER PART OF SECTION: 1929 c 82 § 1 now codified in RCW 69.32.010.]

69.36.030 Condemnation of misbranded packages.

Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any superior court within the jurisdiction of which the same is found and seized for confiscation, and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the state treasurer; but such substance shall not be sold contrary to the laws of the state: *Provided, however,* That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in the seizure, and condemnation of substances unfit for human consumption. [1929 c 82 § 3; RRS § 2508-3.]

69.36.040 Enforcement—Approval of labels. The director of agriculture shall enforce the provisions of this chapter, and he is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this chapter as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this statute: *Provided, however,* That in any prosecution under this chapter the fact that any brand or label involved in said prosecution has not been submitted to said director for approval, or if submitted, has not been approved by him, shall be immaterial. [1929 c 82 § 5; RRS § 2508-5.]

69.36.050 Duty to prosecute. Every prosecuting attorney to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this chapter shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided. [1929 c 82 § 6; RRS § 2508-6.]

69.36.060 Penalty. Any person violating the provisions of this chapter shall be guilty of a misdemeanor. [1929 c 82 § 4; RRS § 2508-4.]

69.36.070 Short title. This chapter may be cited as the Washington Caustic Poison Act of 1929. [1929 c 82 § 7; RRS § 2508-7.]

Chapter 69.40

POISONS AND DANGEROUS DRUGS

Sections

69.40.010	Poison in edible products.
69.40.015	Poison in edible products—Penalty.
69.40.020	Poison in milk or food products—Penalty.
69.40.025	Supplementary to existing laws—Enforcement.
69.40.030	Placing poison or other harmful object or substance in food, drinks, medicine or water—Penalty.
69.40.050	Selling poison without labeling and recording the sale—Penalty.
69.40.150	Drug control assistance unit investigative assistance for enforcement of chapter.

Pharmacists: Chapter 18.64 RCW.

Poisoning animals—Strychnine sales: RCW 16.52.190–16.52.195.

Poisonous bait, etc., a game violation: RCW 77.16.060.

Washington pesticide application act: Chapter 17.21 RCW.

69.40.010 Poison in edible products. It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison. [1905 c 141 § 1; RRS § 6140. FORMER PART OF SECTION: 1905 c 141 § 2 now codified as RCW 69.40.015.]

69.40.015 Poison in edible products—Penalty. Any person violating the provisions of RCW 69.40.010 shall upon conviction be punished by a fine of not less than ten dollars nor more than five hundred dollars. [1905 c 141 § 2; RRS § 6141. Formerly RCW 69.40.010, part.]

69.40.020 Poison in milk or food products—Penalty. Any person who shall sell, offer to sell, or have in his possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one year nor more than three years. [1905 c 50 § 1; RRS § 6142. FORMER PART OF SECTION: 1905 c 50 § 2 now codified as RCW 69.40.025.]

69.40.025 Supplementary to existing laws—Enforcement. This act shall be supplementary to the laws of this state now in force prohibiting the adulteration of food and fraud in the sale thereof; and the state dairy and food commissioner, the chemist of the state agricultural experiment station, the state attorney general and the prosecuting attorneys of the several counties of this state are hereby required, without additional compensation, to assist in the execution of *this act, and in the

prosecution of all persons charged with the violation thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this state against the adulteration of food and fraud in the sale thereof. [1905 c 50 § 2; RRS § 6143. Formerly RCW 69.40.020, part.]

***Reviser's note:** (1) "this act" appears in 1905 c 50 codified as RCW 69.40.020 and 69.40.025.

(2) The duties of the state dairy and food commissioner have devolved upon the director of agriculture through a chain of statute as follows: 1913 c 60 § 6(2); 1921 c 7 § 93(1). See RCW 43.23.090(1).

69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine or water—Penalty.

Every person who shall wilfully mingle poison or place any harmful object or substance, including but not limited to pins, tacks, needles, nails, razor blades, wire, or glass in any food, drink, medicine, or other edible substance intended or prepared for the use of a human being or who shall knowingly furnish, with intent to harm another person, any food, drink, medicine, or other edible substance containing such poison or harmful object or substance to another human being, and every person who shall wilfully poison any spring, well or reservoir of water, shall be punished by imprisonment in the state penitentiary for not less than five years or by a fine of not less than one thousand dollars: *Provided, however,* That *this act shall not apply to the employer or employers of a person who violates the provisions contained herein without such employer's knowledge. [1973 c 119 § 1; 1909 c 249 § 264; RRS § 2516. Prior: Code 1881 § 802; 1873 p 185 § 27; 1869 p 202 § 25; 1854 p 79 § 25.]

***Reviser's note:** "this act" apparently refers to the amendment to this section by 1973 c 119 § 1.

Reviser's note: Caption for 1909 c 249 § 264 reads: "Wilfully poisoning food."

69.40.050 Selling poison without labeling and recording the sale—Penalty.

It shall be unlawful for any person to sell at retail or furnish any of the poisons named in the schedules hereinafter set forth, without affixing or causing to be affixed to the bottle, box, vessel or package, a label containing the name of the article and the word "poison" distinctly shown, with the name and place of business of the seller, all printed in red ink, together with the name of such poison printed or written thereon in plain, legible characters, which schedules are as follows, to wit:

SCHEDULE "A"

Arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce.

SCHEDULE "B"

Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic

acid, paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less. Every person who shall dispose of or sell at retail or furnish any poisons included under schedule A shall, before delivering the same, make or cause to be made an entry in a book kept for that purpose, stating the date of sale, the name and address of the purchaser, the name and the quantity of the poison, the purpose for which it is represented by the purchaser to be required and the name of the dispenser, such book to be always open for inspection by the proper authorities, and to be preserved for at least five years after the last entry. He shall not deliver any of said poisons to any minor, intoxicated person, or person known to be of unsound mind, or to any person without satisfying himself that the purchaser is aware of its poisonous character and that the said poison is to be used for a legitimate purpose. The foregoing portions of this section shall not apply to the dispensing of medicines, or poisons, on physicians' prescriptions. Wholesale dealers in drugs, medicines, pharmaceutical preparations or chemicals shall affix or cause to be affixed to every bottle, box, parcel or outer enclosure of an original package containing any of the articles enumerated under said schedule A, a suitable brand in red ink with the word "poison" upon it. Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [1909 c 249 § 256; RRS § 2508. Prior: Code 1881 § 954; 1873 p 211 § 135; 1869 p 227 § 129; 1854 p 97 § 123.]

69.40.150 Drug control assistance unit investigative assistance for enforcement of chapter. See RCW 43.43.610.

Chapter 69.41

LEGEND DRUGS—PRESCRIPTION DRUGS

Sections	
69.41.010	Definitions.
69.41.020	Prohibited acts—Information not privileged communication.
69.41.030	Sale, delivery or possession of legend drug without prescription or order prohibited—Exceptions.
69.41.040	Prescription requirements.
69.41.050	Labeling requirements.
69.41.060	Search and seizure.
69.41.070	Penalties.
69.41.075	Rules—Availability of lists of drugs.
	SUBSTITUTION OF PRESCRIPTION DRUGS
69.41.100	Legislative recognition and declaration.
69.41.110	Definitions.
69.41.120	Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Form—Contents—Procedure. Savings in price to be passed on to purchaser.
69.41.130	Minimum manufacturing standards and practices.
69.41.140	Liability of practitioner, pharmacist.
69.41.150	Pharmacy signs as to substitution for prescribed drugs.
69.41.160	Coercion of pharmacist prohibited—Penalty.
69.41.170	Rules.
69.41.180	Severability—1979 c 110.
69.41.900	

69.41.010 Definitions. As used in this chapter:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(3) "Dispense" means to deliver a legend drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(4) "Dispenser" means a practitioner who dispenses.

(5) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(6) "Distributor" means a person who distributes.

(7) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(8) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(9) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(10) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatrist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, an osteopathic physician's assistant under chapter 18.57A RCW, or a physician's assistant under chapter 18.71A RCW, or a pharmacist under chapter 18.64 RCW.

(b) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a legend drug in the course of professional practice or research in this state. [1979 1st ex.s. c 139 § 1; 1973 1st ex.s. c 186 § 1.]

69.41.020 Prohibited acts—Information not privileged communication. Legend drugs shall not be sold, delivered, dispensed or administered except in accordance with this chapter.

(1) No person shall obtain or attempt to obtain a legend drug, or procure or attempt to procure the administration of a legend drug:

(a) By fraud, deceit, misrepresentation, or subterfuge; or

(b) By the forgery or alteration of a prescription or of any written order; or

(c) By the concealment of a material fact; or

(d) By the use of a false name or the giving of a false address.

(2) Information communicated to a practitioner in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this chapter.

(4) No person shall, for the purpose of obtaining a legend drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, or any practitioner.

(5) No person shall make or utter any false or forged prescription or other written order for legend drugs.

(6) No person shall affix any false or forged label to a package or receptacle containing legend drugs. [1973 1st ex.s. c 186 § 2.]

69.41.030 Sale, delivery or possession of legend drug without prescription or order prohibited—Exceptions.

It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatrist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces, marine hospital service, or public health service in the discharge of his official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his official duties, a registered nurse under chapter 18.88 RCW when authorized by the board of nursing, an osteopathic physician's assistant under chapter 18.57A RCW when authorized by the committee of osteopathic examiners, a physician's assistant under chapter 18.71A RCW when authorized by the board of medical examiners, or a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathy and surgery in any state or province of Canada which shares a common border with the state of Washington: *Provided, however,* That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is

in the usual course of business or employment. [1979 1st ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

69.41.040 Prescription requirements. A prescription, in order to be effective in legalizing the possession of legend drugs, must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. An order purporting to be a prescription issued to a drug abuser or habitual user of legend drugs, not in the course of professional treatment, is not a prescription within the meaning and intent of this section; and the person who knows or should know that he is filling such an order, as well as the person issuing it, may be charged with violation of this chapter. A legitimate medical purpose shall include use in the course of a bona fide research program in conjunction with a hospital or university. [1973 1st ex.s. c 186 § 4.]

69.41.050 Labeling requirements. To every box, bottle, jar, tube or other container of a legend drug, which is dispensed by a practitioner authorized to prescribe legend drugs, there shall be affixed a label bearing the name of the prescriber, complete directions for use, the name of the drug and strength per unit dose, name of patient and date: *Provided*, That the practitioner may omit the name and dosage of the drug if he determines that his patient should not have this information and that, if the drug dispensed is a trial sample in its original package and which is labeled in accordance with federal law or regulation, there need be set forth additionally only the name of the issuing practitioner and the name of the patient. [1973 1st ex.s. c 186 § 5.]

69.41.060 Search and seizure. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court or justice of the peace that there is probable cause to believe that any legend drug is being used, manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such justice of the peace or judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any peace officer in the county, commanding him to search the premises designated and described in such complaint and warrant, and to seize all legend drugs there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing or otherwise disposing of such legend drugs and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such legend drugs, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the

same are found, or, if there be no door, then in any conspicuous place upon the premises. [1973 1st ex.s. c 186 § 6.]

69.41.070 Penalties. Whoever violates any provision of this chapter shall, upon conviction, be fined and imprisoned as herein provided:

(1) For a violation of RCW 69.41.020, the offender shall be guilty of a felony.

(2) For a violation of RCW 69.41.030 involving the sale, delivery or possession with intent to sell or deliver, the offender shall be guilty of a felony.

(3) For a violation of RCW 69.41.030 involving possession, the offender shall be guilty of a misdemeanor.

(4) For a violation of RCW 69.41.040, the offender shall be guilty of a felony.

(5) For a violation of RCW 69.41.050, the offender shall be guilty of a misdemeanor.

(6) Any offense which is a violation of chapter 69.50 RCW shall not be charged under this chapter. [1973 1st ex.s. c 186 § 7.]

69.41.075 Rules—Availability of lists of drugs. The state board of pharmacy may make such rules for the enforcement and administration of this chapter as are deemed necessary or advisable. The board shall identify, by rule-making pursuant to chapter 34.04 RCW, those drugs which may be dispensed only on prescription or are restricted to use by practitioners, only. In so doing the board shall consider the toxicity or other potentiality for harmful effect of the drug, the method of its use, and any collateral safeguards necessary to its use. The board shall classify a drug as a legend drug where these considerations indicate the drug is not safe for use except under the supervision of a practitioner.

In identifying legend drugs the board may incorporate in its rules lists of drugs contained in commercial pharmaceutical publications by making specific reference to each such list and the date and edition of the commercial publication containing it. Any such lists so incorporated shall be available for public inspection at the headquarters of the state board of pharmacy and shall be available on request from the board upon payment of a reasonable fee to be set by the board. [1979 1st ex.s. c 139 § 3.]

SUBSTITUTION OF PRESCRIPTION DRUGS

69.41.100 Legislative recognition and declaration. The legislature recognizes the responsibility of the state to insure that the citizens of the state are offered the benefit of quality pharmaceutical products at competitive prices. Advances in the drug industry resulting from research and the elimination of counterfeiting of prescription drugs should benefit the users of the drugs. Pharmacy must continue to operate with accountability and effectiveness. The legislature hereby declares it to be the policy of the state that its citizens receive safe and therapeutically effective drug products at the most reasonable cost consistent with high drug quality standards. [1977 ex.s. c 352 § 1.]

Severability—1977 ex.s. c 352: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 352 § 10.] This applies to RCW 69.41.100–69.41.180.

69.41.110 Definitions. As used in RCW 69.41.100 through 69.41.180, the following words shall have the following meanings:

(1) "Brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label, or wrapping at the time of packaging;

(2) "Generic name" means the official title of a drug or drug ingredients published in the latest edition of a nationally recognized pharmacopoeia or formulary;

(3) "Substitute" means to dispense, with the practitioner's authorization, a "therapeutically equivalent" drug product of the identical base or salt as the specific drug product prescribed: *Provided*, That with the practitioner's prior consent, therapeutically equivalent drugs other than the identical base or salt may be dispensed;

(4) "Therapeutically equivalent" means essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen; and

(5) "Practitioner" means a physician, osteopathic physician and surgeon, dentist, veterinarian, or any other person authorized to prescribe drugs under the laws of this state. [1979 c 110 § 1; 1977 ex.s. c 352 § 2.]

69.41.120 Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Form—Contents—Procedure. Every drug prescription shall contain an instruction on whether or not a therapeutically equivalent generic drug may be substituted in its place, unless substitution is permitted under a prior-consent authorization.

If a written prescription is involved, the form shall have two signature lines at opposite ends on the bottom of the form. Under the line at the right side shall be clearly printed the words "DISPENSE AS WRITTEN". Under the line at the left side shall be clearly printed the words "SUBSTITUTION PERMITTED". The practitioner shall communicate the instructions to the pharmacist by signing the appropriate line. No prescription shall be valid without the signature of the practitioner on one of these lines.

If an oral prescription is involved, the practitioner or the practitioner's agent shall instruct the pharmacist as to whether or not a therapeutically equivalent generic drug may be substituted in its place. The pharmacist shall note the instructions on the file copy of the prescription.

The pharmacist shall note the manufacturer of the drug dispensed on the file copy of a written or oral prescription. [1979 c 110 § 2; 1977 ex.s. c 352 § 3.]

69.41.130 Savings in price to be passed on to purchaser. The pharmacist shall substitute an equivalent drug product which he has in stock if its wholesale price to the pharmacist is less than the wholesale price of the prescribed drug product, and at least sixty percent of the

savings shall be passed on to the purchaser. [1979 c 110 § 3; 1977 ex.s. c 352 § 4.]

69.41.140 Minimum manufacturing standards and practices. A pharmacist may not substitute a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices:

(1) Maintain quality control standards equal to those of the Food and Drug Administration;

(2) Comply with regulations promulgated by the Food and Drug Administration. [1979 c 110 § 4; 1977 ex.s. c 352 § 5.]

69.41.150 Liability of practitioner, pharmacist. (1) A practitioner who authorizes a prescribed drug shall not be liable for any side effects or adverse reactions caused by the manner or method by which a substituted drug product is selected or dispensed.

(2) A pharmacist who substitutes an equivalent drug product pursuant to RCW 69.41.100 through 69.41.180 as now or hereafter amended assumes no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its established name. [1979 c 110 § 5; 1977 ex.s. c 352 § 6.]

69.41.160 Pharmacy signs as to substitution for prescribed drugs. Every pharmacy shall post a sign in a location at the prescription counter that is readily visible to patrons stating, "Under Washington law, an equivalent but less expensive drug may in some cases be substituted for the drug prescribed by your doctor. Such substitution, however, may only be made with the consent of your doctor. Please consult your pharmacist or physician for more information." [1979 c 110 § 6; 1977 ex.s. c 352 § 7.]

69.41.170 Coercion of pharmacist prohibited—Penalty. It shall be unlawful for any employer to coerce, within the meaning of RCW 9A.36.070, any pharmacist to dispense a generic drug or to substitute a generic drug for another drug. A violation of this section shall be punishable as a misdemeanor. [1977 ex.s. c 352 § 8.]

69.41.180 Rules. The state board of pharmacy may adopt any necessary rules under chapter 34.04 RCW for the implementation, continuation, or enforcement of RCW 69.41.100 through 69.41.180, including, but not limited to, a list of therapeutically or nontherapeutically equivalent drugs which, when adopted, shall be provided to all registered pharmacists in the state and shall be updated as necessary. [1979 c 110 § 7; 1977 ex.s. c 352 § 9.]

69.41.900 Severability—1979 c 110. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 110 § 8.]

Chapter 69.50

ARTICLE I
DEFINITIONS

UNIFORM CONTROLLED SUBSTANCES ACT

Sections

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69.50.101 Definitions. As used in this chapter:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(1) a practitioner, or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(c) "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

(d) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Article II.

(e) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(f) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(g) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(h) "Dispenser" means a practitioner who dispenses.

(i) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(j) "Distributor" means a person who distributes.

(k) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

(l) "Immediate precursor" means a substance which the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control

of which is necessary to prevent, curtail, or limit manufacture.

(m) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(2) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(n) "Marihuana" means all parts of the plant of the genus *Cannabis* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(o) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(p) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(q) "Opium poppy" means the plant of the genus *Papaver* L., except its seeds, capable of producing an opiate.

(r) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(s) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(t) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a chiropractist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(u) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(v) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(w) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(x) "Board" means the state board of pharmacy.

(y) "Executive officer" means the executive officer of the state board of pharmacy. [1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Severability—1973 2nd ex.s. c 38: "If any of the provisions of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the amendatory act, or the application of the provision to other persons or circumstances, or the act prior to its amendment is not affected." [1973 2nd ex.s. c 38 § 3.] This applies to the amendments to RCW 69.50.101 and 46.61.520 by 1973 2nd ex.s. c 38.

ARTICLE II STANDARDS AND SCHEDULES

69.50.201 Authority to control. (a) The state board of pharmacy shall administer this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the rule-making procedures of chapter 34.04 RCW. In making a

determination regarding a substance, the board shall consider the following:

- (1) the actual or relative potential for abuse;
- (2) the scientific evidence of its pharmacological effect, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration, and significance of abuse;
- (6) the risk to the public health;
- (7) the potential of the substance to produce psychic or physiological dependence liability; and
- (8) whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the factors enumerated in subsection (a) the board may issue a rule controlling the substance if it finds the substance has a potential for abuse.

(c) If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the board, the substance shall be similarly controlled under this chapter after the expiration of thirty days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall proceed pursuant to the rule-making procedures of chapter 34.04 RCW.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 66 RCW and Title 26 RCW.

(f) The board shall exclude any nonnarcotic substances from a schedule if such substances may, under the Federal Food, Drug and Cosmetic Act, and under regulations of the bureau, and the laws of this state including RCW 18.64.250, be lawfully sold over the counter. [1971 ex.s. c 308 § 69.50.201.]

69.50.202 Nomenclature. The controlled substances listed or to be listed in the schedules in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 are included by whatever official, common, usual, chemical, or trade name designated. [1971 ex.s. c 308 § 69.50.202.]

69.50.203 Schedule I tests. The state board of pharmacy shall place a substance in Schedule I if it finds that the substance:

- (1) has high potential for abuse; and
- (2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. [1971 ex.s. c 308 § 69.50.203.]

69.50.204 Schedule I. (a) The controlled substances listed in this section are included in Schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;
- (9) Betamethadol;
- (10) Betaprodine;
- (11) Clonitazene;
- (12) Dextromoramide;
- (13) Dextrorphan;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetyl butyrate;
- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxidine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacylmorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;
- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Propheptazine;
- (40) Properidine;
- (41) Racemoramide;
- (42) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Etorphine;
- (10) Heroin;

- (11) Hydromorphenol;
- (12) Methyldesorphine;
- (13) Methyldihydromorphine;
- (14) Morphine methylbromide;
- (15) Morphine methylsulfonate;
- (16) Morphine-N-Oxide;
- (17) Myrophine;
- (18) Nicocodeine;
- (19) Nicomorphine;
- (20) Normorphine;
- (21) Phoclodine;
- (22) Thebacon.

(d) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) Bufotenine;
- (5) Diethyltryptamine;
- (6) Dimethyltryptamine;
- (7) 4-methyl-2,5-dimethoxyamphetamine;
- (8) Ibogaine;
- (9) Lysergic acid diethylamide;
- (10) Marihuana;
- (11) Mescaline;
- (12) Peyote;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) Psilocybin;
- (16) Psilocyn;
- (17) Tetrahydrocannabinols. [1971 ex.s. c 308 § 69.50.204.]

69.50.205 Schedule II tests. The state board of pharmacy shall place a substance in Schedule II if it finds that:

- (1) the substance has high potential for abuse;
- (2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) the abuse of the substance may lead to severe psychic or physical dependence. [1971 ex.s. c 308 § 69.50.205.]

69.50.206 Schedule II. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Dihydrocodeine;
- (5) Diphenoxylate;
- (6) Fentanyl;
- (7) Isomethadone;
- (8) Levomethorphan;
- (9) Levorphanol;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (13) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (14) Pethidine;
- (15) Pethidine—Intermediate—A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine—Intermediate—B, ethyl-4-phenylpiperidine-4-carboxylate;
- (17) Pethidine—Intermediate—C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;
- (21) Racemorphan. [1971 ex.s. c 308 § 69.50.206.]

69.50.207 Schedule III tests. The state board of pharmacy shall place a substance in Schedule III if it finds that:

- (1) the substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. [1971 ex.s. c 308 § 69.50.207.]

69.50.208 Schedule III. (a) The controlled substances listed in this section are included in Schedule III.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Phenmetrazine and its salts;
- (3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
- (4) Methylphenidate.

(c) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other Schedules;

- (2) Chlorhexadol;
- (3) Glutethimide;
- (4) Lysergic acid;
- (5) Lysergic acid amide;
- (6) Methyprylon;
- (7) Phencyclidine;
- (8) Sulfondiethylmethane;
- (9) Sulfonethylmethane;
- (10) Sulfonmethane.

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) The state board of pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this

chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system. [1971 ex.s. c 308 § 69.50.208.]

69.50.209 Schedule IV tests. The state board of pharmacy shall place a substance in Schedule IV if it finds that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. [1971 ex.s. c 308 § 69.50.209.]

69.50.210 Schedule IV. (a) The controlled substances listed in this section are included in Schedule IV.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Barbitol;
- (2) Chloral betaine;
- (3) Chloral hydrate;
- (4) Ethchlorvynol;
- (5) Ethinamate;
- (6) Methohexital;
- (7) Meprobamate;
- (8) Methylphenobarbital;
- (9) Paraldehyde;
- (10) Petrichloral;
- (11) Phenobarbital.

(c) The state board of pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system. [1971 ex.s. c 308 § 69.50.210.]

69.50.211 Schedule V tests. The state board of pharmacy shall place a substance in Schedule V if it finds that:

(1) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV. [1971 ex.s. c 308 § 69.50.211.]

69.50.212 Schedule V. (a) The controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams. [1971 ex.s. c 308 § 69.50.212.]

69.50.213 Republishing of schedules. The state board of pharmacy shall at least semiannually for two years from May 21, 1971 and thereafter annually consider the revision of the schedules published pursuant to chapter 34.04 RCW. [1971 ex.s. c 308 § 69.50.213.]

ARTICLE III REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

69.50.301 Rules. The state board of pharmacy may promulgate rules and charge reasonable fees of not less than ten dollars or more than fifty dollars relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state. [1971 ex.s. c 308 § 69.50.301.]

69.50.302 Registration requirements. (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the state board of pharmacy in accordance with its rules.

(b) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment: *Provided*, That this exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety: *Provided*, That personal practitioners licensed or registered in the state of Washington under the respective professional licensing acts shall not be required to be registered under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's rule. [1971 ex.s. c 308 § 69.50.302.]

69.50.303 Registration. (a) The state board of pharmacy shall register an applicant to manufacture or distribute controlled substances included in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered, or exempted under RCW 69.50.302(d), to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this Article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II

through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the board evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration entitles them to be registered under this chapter upon application and payment of the required fee. [1971 ex.s. c 308 § 69.50.303.]

69.50.304 Revocation and suspension of registration.

(a) A registration, or exemption from registration, under RCW 69.50.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the state board of pharmacy upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this chapter;

(2) has been found guilty of a felony under any state or federal law relating to any controlled substance; or

(3) has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(b) The board may limit revocation or suspension of a registration to the particular controlled substance or schedule of controlled substances, with respect to which grounds for revocation or suspension exist.

(c) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The board shall promptly notify the Bureau of all orders suspending or revoking registration and all forfeitures of controlled substances. [1971 ex.s. c 308 § 69.50.304.]

69.50.305 Procedure for denial, suspension or revocation of registration. (a) Any registration, or exemption from registration, issued pursuant to the provisions of this chapter shall not be denied, suspended, or revoked unless the board denies, suspends, or revokes such registration, or exemption from registration, by proceedings consistent with the administrative procedure act, chapter 34.04 RCW.

(b) The board may suspend any registration simultaneously with the institution of proceedings under RCW 69.50.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction. [1971 ex.s. c 308 § 69.50.305.]

69.50.306 Records of registrants. Persons registered, or exempted from registration under RCW 69.50.302(d), to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the state board of pharmacy issues. [1971 ex.s. c 308 § 69.50.306.]

69.50.307 Order forms. Controlled substances in Schedule I and II shall be distributed by a registrant or person exempt from registration under RCW 69.50.302(d) to another registrant, or person exempt from registration under RCW 69.50.302(d), only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section. [1971 ex.s. c 308 § 69.50.307.]

69.50.308 Prescriptions. (a) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the state board of pharmacy, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of RCW 69.50.306. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under RCW 69.04.560, shall not be dispensed without a written or oral prescription of a practitioner. Any oral prescription must be promptly reduced to writing. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) A valid prescription or lawful order of a practitioner, in order to be effective in legalizing the possession of controlled substances, must be issued in good faith for a legitimate medical purpose by one authorized to prescribe the use of such controlled substance. An order purporting to be a prescription not in the course of professional treatment is not a valid prescription or lawful order of a practitioner within the meaning and intent of this chapter; and the person who knows or should know that he is filling such an order, as well as the person issuing it, can be charged with a violation of this chapter.

(e) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose. [1971 ex.s. c 308 § 69.50.308.]

69.50.309 Containers. A person to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner, and the owner of any animal for which such controlled substance has been

prescribed, sold, or dispensed may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. [1971 ex.s. c 308 § 69.50.309.]

69.50.310 Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control. On and after September 21, 1977, a humane society and animal control agency may apply to the state board of pharmacy for registration pursuant to the applicable provisions of this chapter for the sole purpose of being authorized to purchase, possess, and administer sodium pentobarbital to euthanize injured, sick, homeless, or unwanted domestic pets and animals. Any agency so registered shall not permit a person to administer sodium pentobarbital unless such person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering this drug.

The board may issue a limited registration to carry out the provisions of this section. The board shall promulgate such rules as it deems necessary to insure strict compliance with the provisions of this section. The board may suspend or revoke registration upon determination that the person administering sodium pentobarbital has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [1977 ex.s. c 197 § 1.]

ARTICLE IV OFFENSES AND PENALTIES

69.50.401 Prohibited acts: A—Penalties. (a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or fined not more than twenty-five thousand dollars, or both;

(ii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(ii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(c) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(d) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both, except as provided for in subsection (e) of this section.

(e) Except as provided for in subsection (a)(1)(ii) of this section any person found guilty of possession of forty grams or less of marijuana shall be guilty of a misdemeanor.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410. [1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

69.50.402 Prohibited acts: B—Penalties. (a) It is unlawful for any person:

(1) who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

(2) who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) who is a practitioner, to prescribe, order, dispense, administer, supply, or give to any person:

(i) any amphetamine, including its salts, optical isomers, and salts of optical isomers classified as a schedule

II controlled substance by the board of pharmacy pursuant to chapter 34.04 RCW; or

(ii) any nonnarcotic stimulant classified as a schedule II controlled substance and designated as a nonnarcotic stimulant by the board of pharmacy pursuant to chapter 34.04 RCW;

except for the treatment of narcolepsy or for the treatment of hyperkinesis, or for the treatment of drug-induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic psychiatric evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the state board of pharmacy before the investigation has been begun: *Provided*, That investigations by the board of pharmacy of abuse of prescriptive authority by physicians, licensed pursuant to chapter 18.71 RCW, pursuant to subsection (a)(3) of this section shall be done in consultation with the medical disciplinary board;

(4) to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter;

(5) to refuse an entry into any premises for any inspection authorized by this chapter; or

(6) knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [1979 1st ex.s. c 119 § 1; 1971 ex.s. c 308 § 69.50.402.]

69.50.403 Prohibited acts: C—Penalties. (a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by RCW 69.50.307;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii) by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address.

(4) To falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance.

(5) To make or utter any false or forged prescription or false or forged written order.

(6) To affix any false or forged label to a package or receptacle containing controlled substances.

(7) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

(8) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

(c) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, or fined not more than two thousand dollars, or both. [1971 ex.s. c 308 § 69.50.403.]

69.50.404 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [1971 ex.s. c 308 § 69.50.404.]

69.50.405 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. [1971 ex.s. c 308 § 69.50.405.]

69.50.406 Distribution to persons under age eighteen. Any person eighteen years of age or over who violates RCW 69.50.401(a) by distributing a controlled substance listed in Schedules I or II which is a narcotic drug to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by RCW 69.50.401(a)(1)(i), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(a)(1)(i), or by both. Any person eighteen years of age or over who violates RCW 69.50.401(a) by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by RCW 69.50.401(a)(1)(ii), (iii), or (iv), by a term of imprisonment up to twice that authorized by RCW 69.50.401(a)(1)(ii), (iii), or (iv), or both. [1971 ex.s. c 308 § 69.50.406.]

69.50.407 Conspiracy. Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy. [1971 ex.s. c 308 § 69.50.407.]

69.50.408 Second or subsequent offenses. (a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under RCW 69.50.401(c). [1971 ex.s. c 308 § 69.50.408.]

69.50.410 Prohibited acts: D—Penalties. (1) Except as authorized by this chapter it shall be unlawful for any person to sell for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana.

For the purposes of this section only, the following words and phrases shall have the following meanings:

(a) "To sell" means the passing of title and possession of a controlled substance from the seller to the buyer for a price whether or not the price is paid immediately or at a future date.

(b) "For profit" means the obtaining of anything of value in exchange for a controlled substance.

(c) "Price" means anything of value.

(2) Any person convicted of a violation of subsection (1) of this section shall receive a sentence of not more than five years in a correctional facility of the department of social and health services for the first offense. Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, of subsection (1) of this section shall receive a mandatory sentence of five years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for the second or subsequent violation of subsection (1) of this section.

(3) Any person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for such violation. Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin shall receive a mandatory sentence of ten years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for this second or subsequent violation: *Provided*, That the board of prison terms and paroles under RCW 9.95-.040 shall not reduce the minimum term imposed for a violation under this subsection.

(4) In addition to the sentences provided in subsection (2) of this section, any person convicted of a violation of subsection (1) of this section shall be fined in an amount calculated to at least eliminate any and all proceeds or

profits directly or indirectly gained by such person as a result of sales of controlled substances in violation of the laws of this or other states, or the United States, up to the amount of five hundred thousand dollars on each count.

(5) Any person, addicted to the use of controlled substances, who voluntarily applies to the department of social and health services for the purpose of participating in a rehabilitation program approved by the department for addicts of controlled substances shall be immune from prosecution for subsection (1) offenses unless a filing of an information or indictment against such person for a violation of subsection (1) of this section is made prior to his voluntary participation in the program of the department of social and health services. All applications for immunity under this section shall be sent to the department of social and health services in Olympia. It shall be the duty of the department to stamp each application received pursuant to this section with the date and time of receipt.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.401 as now or hereafter amended. [1975-'76 2nd ex.s. c 103 § 1; 1973 2nd ex.s. c 2 § 2.]

ARTICLE V ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

69.50.500 Powers of enforcement personnel. (a) It is hereby made the duty of the state board of pharmacy, its officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and all other states, relating to controlled substances as defined in this chapter.

(b) Employees of the Washington state board of pharmacy, who are so designated by the board as enforcement officers are declared to be peace officers and shall be vested with police powers to enforce the drug laws of this state, including this chapter. [1971 ex.s. c 308 § 69.50.500.]

69.50.501 Administrative inspections. The state board of pharmacy may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(a) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(b) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to RCW 69.50.502 an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(a) inspect and copy records required by this chapter to be kept;

(b) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(c) inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with chapter 34.04 RCW, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) if the owner, operator, or agent in charge of the controlled premises consents;

(b) in situations presenting imminent danger to health or safety;

(c) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(d) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(e) in all other situations in which a warrant is not constitutionally required;

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing. [1971 ex.s. c 308 § 69.50.501.]

69.50.502 Warrants for administrative inspections. Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of a superior court, or a judge of a district court within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures or property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(a) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(b) be directed to a person authorized by RCW 69.50.500 to execute it;

(c) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(d) identify the item or types of property to be seized, if any;

(e) direct that it be served during normal business hours and designate the judge to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court in which the inspection was made. [1971 ex.s. c 308 § 69.50.502.]

69.50.503 Injunctions. (a) The superior courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section. [1971 ex.s. c 308 § 69.50.503.]

69.50.504 Cooperative arrangements. The state board of pharmacy shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. [1971 ex.s. c 308 § 69.50.504.]

69.50.505 Seizure and forfeiture. (a) The following are subject to seizure and forfeiture:

(1) all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(2) all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(3) all property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraphs (1) or (2), but:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(iii) a conveyance is not subject to forfeiture for a violation of *RCW 69.50.401(c); and,

(iv) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) a board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge

thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(d) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4) of this section within forty-five days of the seizure, the item seized shall be deemed forfeited.

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4) of this section within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. A hearing before the seizing agency and any appeal therefrom shall be under chapter 34.04 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of items specified in subsection (a)(4) of this section. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the hearing officer or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(4) of this section.

(f) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(1) retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(2) sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;

(3) request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the Bureau for disposition.

(g) Controlled substances listed in Schedule I, II, III, IV and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV and V, which are seized or come into the possession of

the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(h) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(i) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he is the holder thereof constitutes authority for the seizure and forfeiture of the plants. [1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.]

*Reviser's note: RCW 69.50.401 was amended by 1979 c 67 § 1 and this reference probably now refers to RCW 69.50.401(d).

69.50.506 Burden of proof; liabilities. (a) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this chapter upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties. [1971 ex.s. c 308 § 69.50.506.]

69.50.507 Judicial review. All final determinations, findings and conclusions of the state board of pharmacy under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the superior court wherein he resides or in the superior court of Thurston county, such review to be in conformity with the administrative procedure act, chapter 34.04 RCW. [1971 ex.s. c 308 § 69.50.507.]

69.50.508 Education and research. (a) The state board of pharmacy may carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The board may encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, it may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The board may enter into contracts for educational and research activities without performance bonds.

(d) The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization. [1971 ex.s. c 308 § 69.50.508.]

69.50.509 Search and seizure of controlled substances. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court, justice of the peace, district court judge or municipal judge that there is probable cause to believe that any controlled substance is being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such justice of the peace

or judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any law enforcement officer of the state, commanding him to search the premises designated and described in such complaint and warrant, and to seize all controlled substances there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, administering, dispensing, delivering, distributing, producing, possessing, giving away, furnishing or otherwise disposing of such controlled substances, and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. The provisions of RCW 10.31.030 as now or hereafter amended shall apply to actions taken pursuant to this chapter. [1971 ex.s. c 308 § 69.50.509.]

ARTICLE VI MISCELLANEOUS

69.50.601 Pending proceedings. (a) Prosecution for any violation of law occurring prior to May 21, 1971 is not affected or abated by this chapter. If the offense being prosecuted is similar to one set out in Article IV of this chapter, then the penalties under Article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to May 21, 1971 are not affected by this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to May 21, 1971. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state board of pharmacy shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to May 21, 1971 and who are registered or licensed by the state.

(e) This chapter applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following May 21, 1971. [1971 ex.s. c 308 § 69.50.601.]

69.50.602 Continuation of rules. Any orders and rules promulgated under any law affected by this chapter and in effect on May 21, 1971 and not in conflict with it continue in effect until modified, superseded or repealed. [1971 ex.s. c 308 § 69.50.602.]

69.50.603 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it. [1971 ex.s. c 308 § 69.50.603.]

69.50.604 Short title. This chapter may be cited as the Uniform Controlled Substances Act. [1971 ex.s. c 308 § 69.50.604.]

69.50.605 Severability—1971 ex.s. c 308. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 308 § 69.50.605.]

69.50.606 Repealers. The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act:

(1) Section 2072, Code of 1881, section 418, chapter 249, Laws of 1909, section 4, chapter 205, Laws of 1963 and RCW 9.91.030;

(2) Section 69.33.220, chapter 27, Laws of 1959, section 7, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.220;

(3) Sections 69.33.230 through 69.33.280, chapter 27, Laws of 1959 and RCW 69.33.230 through 69.33.280;

(4) Section 69.33.290, chapter 27, Laws of 1959, section 1, chapter 97, Laws of 1959 and RCW 69.33.290;

(5) Section 69.33.300, chapter 27, Laws of 1959, section 8, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.300;

(6) Sections 69.33.310 through 69.33.400, chapter 27, Laws of 1959 and RCW 69.33.310 through 69.33.400;

(7) Section 69.33.410, chapter 27, Laws of 1959, section 20, chapter 38, Laws of 1963 and RCW 69.33.410;

(8) Sections 69.33.420 through 69.33.440, 69.33.900 through 69.33.950, chapter 27, Laws of 1959 and RCW 69.33.420 through 69.33.440, 69.33.900 through 69.33.950;

(9) Section 255, chapter 249, Laws of 1909 and RCW 69.40.040;

(10) Section 1, chapter 6, Laws of 1939, section 1, chapter 29, Laws of 1939, section 1, chapter 57, Laws of 1945, section 1, chapter 24, Laws of 1955, section 1, chapter 49, Laws of 1961, section 1, chapter 71, Laws of 1967, section 9, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.060;

(11) Section 1, chapter 23, Laws of 1955, section 2, chapter 49, Laws of 1961, section 2, chapter 71, Laws of 1967 and RCW 69.40.061;

(12) Section 21, chapter 38, Laws of 1963 and RCW 69.40.063;

(13) Section 2, chapter 6, Laws of 1939, section 23, chapter 38, Laws of 1963, section 10, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.070;

(14) Section 12, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.075;

(15) Section 1, chapter 205, Laws of 1963 and RCW 69.40.080;

(16) Section 2, chapter 205, Laws of 1963 and RCW 69.40.090;

(17) Section 3, chapter 205, Laws of 1963 and RCW 69.40.100;

(18) Section 11, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.110;

(19) Section 1, chapter 33, Laws of 1970 ex. sess. and RCW 69.40.120; and

(20) Section 1, chapter 80, Laws of 1970 ex. sess. [1971 ex.s. c 308 § 69.50.606.]

69.50.607 Effective date—1971 ex.s. c 308. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1971 ex.s. c 308 § 69.50.607.]

Effective date—1971 ex.s. c 308: The effective date of 1971 ex.s. c 308 was May 21, 1971.

Chapter 69.51

CONTROLLED SUBSTANCES THERAPEUTIC RESEARCH ACT

Sections

69.51.010	Short title.
69.51.020	Legislative purpose.
69.51.030	Definitions.
69.51.040	Controlled substances therapeutic research program.
69.51.050	Patient qualification review committee.
69.51.060	Sources and distribution of marijuana.
69.51.070	Report to the governor, legislature.
69.51.080	Cannabis and related products considered Schedule II substances.

69.51.010 Short title. This chapter may be cited as the Controlled Substances Therapeutic Research Act. [1979 c 136 § 1.]

69.51.020 Legislative purpose. The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill effects of cancer chemotherapy and radiology, and, additionally, may alleviate the ill effects of glaucoma. The legislature further finds that there is a need for further research and experimentation regarding the use of marijuana under strictly controlled circumstances. It is for this purpose that the Controlled Substances Therapeutic Research Act is hereby enacted. [1979 c 136 § 2.]

69.51.030 Definitions. As used in this chapter:

- (1) "Board" means the state board of pharmacy;
- (2) "Marijuana" means all parts of the plant of the genus *Cannabis* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin; and
- (3) "Practitioner" means a physician licensed pursuant to chapter 18.71 or 18.57 RCW. [1979 c 136 § 3.]

69.51.040 Controlled substances therapeutic research program. (1) There is established in the board the controlled substances therapeutic research program. The program shall be administered by the board. The board shall promulgate rules necessary for the proper administration of the Controlled Substances Therapeutic Research Act. In such promulgation, the board shall take

into consideration those pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse.

(2) Except as provided in RCW 69.51.050(4), the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the patient qualification review committee by a practitioner as being involved in a life-threatening or sense-threatening situation: *Provided*, That no patient may be admitted to the controlled substances therapeutic research program without disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment in accordance with the informed consent provisions of chapter 7.70 RCW.

(3) The board shall provide by rule for a program of registration of bona fide controlled substance therapeutic research projects. [1979 c 136 § 4.]

69.51.050 Patient qualification review committee. (1) The board shall appoint a patient qualification review committee to serve at its pleasure. The patient qualification review committee shall be comprised of:

(a) A physician licensed to practice medicine in Washington state and specializing in the practice of ophthalmology;

(b) A physician licensed to practice medicine in Washington state and specializing in the subspecialty of medical oncology;

(c) A physician licensed to practice medicine in Washington state and specializing in the practice of psychiatry; and

(d) A physician licensed to practice medicine in Washington state and specializing in the practice of radiology.

Members of the committee shall be compensated at the rate of fifty dollars per day for each day spent in the performance of their official duties, and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The patient qualification review committee shall review all applicants for the controlled substance therapeutic research program and their licensed practitioners and certify their participation in the program.

(3) The patient qualification review committee and the board shall insure that the privacy of individuals who participate in the controlled substance therapeutic research program is protected by withholding from all persons not connected with the conduct of the research the names and other identifying characteristics of such individuals. Persons authorized to engage in research under the controlled substance therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted, except to the extent necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(4) The patient qualification review committee may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the committee and the board, and after approval for such participation has been granted pursuant to pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse. [1979 c 136 § 5.]

69.51.060 Sources and distribution of marijuana. (1) The board shall obtain marijuana through whatever means it deems most appropriate and consistent with regulations promulgated by the United States food and drug administration, the drug enforcement agency, and the national institute on drug abuse, and pursuant to the provisions of this chapter.

(2) The board may use marijuana which has been confiscated by local or state law enforcement agencies and has been determined to be free from contamination.

(3) The board shall distribute the analyzed marijuana to approved practitioners and/or institutions in accordance with rules promulgated by the board. [1979 c 136 § 6.]

69.51.070 Report to the governor, legislature. The board, in conjunction with the patient qualification review committee, shall report its findings and recommendations to the governor and the forty-seventh legislature regarding the effectiveness of the controlled substances therapeutic research program. [1979 c 136 § 7.]

69.51.080 Cannabis and related products considered Schedule II substances. (1) The enumeration of tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols in RCW 69.50.204 as a Schedule I controlled substance does not apply to the use of cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols by certified patients pursuant to the provisions of this chapter.

(2) Cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols shall be considered Schedule II substances as enumerated in RCW 69.50.206 only for the purposes enumerated in this chapter. [1979 c 136 § 8.]

Chapter 69.54

DRUG AND ALCOHOL REHABILITATION, EDUCATION PROGRAMS—DRUG TREATMENT CENTERS

Sections	
69.54.010	Purpose.
69.54.020	Definitions.
69.54.030	Drug treatment centers—Application for certification—Approval.
69.54.040	Programs for rehabilitation and education—Establishment—Rules and regulations—Contracts with other agencies, individuals.
69.54.050	Agreements pursuant to interlocal cooperation act authorized.

69.54.060	Consent to counseling, care, treatment or rehabilitation—Liability for expenses.
69.54.070	Confidentiality.
69.54.080	Confidentiality—Exception as to statistical or other substantive information.
69.54.090	Records and accounts—Availability to state and federal drug inspectors—Restrictions on use.

69.54.010 Purpose. It is the purpose of this chapter and RCW 71.24.020 and 71.24.030 to provide the financial assistance necessary to enable the department of social and health services to offer a meaningful program of rehabilitation for those persons suffering problems related to narcotic drugs, dangerous drugs, and alcohol and to develop a community educational program as to those problems for the benefit of the state's population generally. Such programs can develop in the people of this state a knowledge of the problems caused by alcohol and drug abuse, an acceptance of responsibility for alcohol and drug related problems, an understanding of the causes and consequences of the use and abuse of alcohol and drugs, and thus may prevent many problems from occurring.

It is the further purpose of this chapter and RCW 71.24.020 and 71.24.030 to provide for qualified drug treatment centers approved by the department of social and health services. [1971 ex.s. c 304 § 1.]

69.54.020 Definitions. The following words and phrases shall have the following meaning when used in this chapter and RCW 71.24.020 and 71.24.030:

(1) "Secretary" shall mean the secretary of the department of social and health services.

(2) "Department" shall mean the department of social and health services.

(3) "Drug and alcohol rehabilitation program" shall mean the program developed by the department of social and health services to aid persons suffering problems related to narcotic drugs, dangerous drugs, and alcohol.

(4) "Drug and alcohol educational program" shall mean the program developed by the department of social and health services outside of the kindergarten through twelve programs in the schools to educate the people of this state relative to the use and abuse of narcotic drugs, dangerous drugs and alcohol, and the prevention and consequences thereof.

(5) "Drug treatment center" shall mean any organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of persons using narcotic drugs or dangerous drugs. [1971 ex.s. c 304 § 2.]

69.54.030 Drug treatment centers—Application for certification—Approval. Every drug treatment center in this state shall apply to the secretary of social and health services for certification as an approved drug treatment center.

The secretary of social and health services shall issue application forms which shall require the following, where applicable:

(1) The name and address of the applicant drug treatment center;

(2) The name of the director or head of such drug treatment center;

(3) The names of the members of the board of directors or sponsors of such drug treatment center;

(4) The names and addresses of all physicians affiliated with such drug treatment center;

(5) A short description of the nature of treatment and/or rehabilitation used by such drug treatment center; and the qualifications of staff to employ such treatment and/or rehabilitation methods;

(6) The source of funds used to finance the activities of such drug treatment center;

(7) Any other information required by rule or regulation of the secretary of social and health services pertaining to the qualifications of such drug treatment center.

The secretary of social and health services may either grant or deny approval or revoke or suspend approval previously granted after investigation to ascertain whether or not such center is adequate to the care, treatment, and rehabilitation of such persons who have voluntarily submitted themselves to the care of such center; such grant, denial or revocation of approval shall be in accordance with standards as set forth in rules and regulations promulgated by the secretary.

Such approval shall be effective for one calendar year from the date of such approval. Renewal of approval shall be made in accordance with the provisions of this section for initial approval and in accordance with the standards set forth in rules and regulations promulgated by the secretary. [1971 ex.s. c 304 § 3.]

69.54.040 Programs for rehabilitation and education—Establishment—Rules and regulations—

Contracts with other agencies, individuals. The secretary shall establish within the department a program designed to aid and rehabilitate persons suffering from problems relating to narcotic drugs, dangerous drugs, and alcohol. Without duplicating, and in coordination with the programs established by the state superintendent of public instruction, the secretary shall establish community educational programs outside of the kindergarten through twelve programs in the schools relating to alcohol and drug use and abuse. The secretary is authorized to promulgate rules and regulations pursuant to chapter 34.04 RCW to carry out the provisions and purposes of this chapter and RCW 71.24.020 and 71.24.030 and is authorized to contract, cooperate and coordinate with other public or private agencies or individuals for such purposes. [1971 ex.s. c 304 § 4.]

69.54.050 Agreements pursuant to interlocal cooperation act authorized. Pursuant to the provisions of the Interlocal Cooperation Act, chapter 39.34 RCW, the department may enter into agreements as provided therein to accomplish the purposes of this chapter and RCW 71.24.020 and 71.24.030. [1971 ex.s. c 304 § 5.]

69.54.060 Consent to counseling, care, treatment or rehabilitation—Liability for expenses. Any person fourteen years of age or older may give consent for himself to the furnishing of counseling, care, treatment or rehabilitation by an approved drug treatment center or

person licensed or certified by the state related to conditions and problems caused by drug or alcohol abuse. Consent of the parent, parents, or legal guardian of a person less than eighteen years of age shall not be necessary to authorize such care, except that such person shall not become a resident of such treatment center without parental permission. The parent, parents or legal guardian of a person less than eighteen years of age shall not be liable for payment of care for such persons pursuant to this chapter and RCW 71.24.020 and 71.24.030, unless they have joined in the consent to such counseling, care, treatment or rehabilitation. [1971 ex.s. c 304 § 8.]

69.54.070 Confidentiality. When an individual submits himself for care, treatment, counseling, or rehabilitation to any organization, institution or corporation, public or private, approved pursuant to this chapter and RCW 71.24.020 and 71.24.030, or any person licensed or certified by the state whose principal function is the care, treatment, counseling or rehabilitation of alcohol abusers or users of narcotic or dangerous drugs, or the providing of medical, psychological or social counseling or treatment, notwithstanding any other provision of law, such individual is hereby guaranteed confidentiality. No such person, organization, institution or corporation or their agents acting in the scope and course of their duties, providing such care, treatment, counseling or rehabilitation shall divulge nor shall they be required to provide any specific information concerning individuals being cared for, treated, counseled or rehabilitated, nor shall pharmacists or their agents provide such information when or if they become aware of or receive such information when requested to or for the purpose of providing products or performing services relevant to said care, treatment, counseling or rehabilitation. Should any person, organization, institution or corporation, or their agents, breach confidentiality as provided for in this section, such information and any product thereof shall not be admissible as evidence or be considered in any criminal proceeding. The fact of an individual of authorized age being cared for, treated, counseled or rehabilitated pursuant to this chapter and RCW 71.24.020 and 71.24.030 shall likewise be held confidential and shall not be admissible as evidence or be considered in any criminal proceeding.

Any confidentiality provided for by this section may be waived by the individual, provided such waiver is freely and voluntarily made, and with full prior information as to the consequences thereof. [1971 ex.s. c 304 § 9.]

69.54.080 Confidentiality—Exception as to statistical or other substantive information. Nothing contained in this chapter and RCW 71.24.020 and 71.24.030 shall prohibit or be construed to prohibit the divulging or providing of statistical or other substantive information pertaining to care, treatment, counseling or rehabilitation, pursuant to this chapter and RCW 71.24.020 and 71.24.030, so long as no individual is identified or reasonably identifiable, and individual privacy and confidentiality is retained. [1971 ex.s. c 304 § 10.]

69.54.090 Records and accounts—Availability to state and federal drug inspectors—Restrictions on use. Nothing contained in this chapter and RCW 71.24.020 and 71.24.030 shall relieve any person or firm from the requirements under federal and state drug laws and regulations for the keeping of records and the responsibility for the accountability of drugs received and dispensed. Such records, insofar as they contain confidential information under this chapter and RCW 71.24.020 and 71.24.030, shall only be available to state and federal drug inspectors who shall not divulge such information as is contained in these records, including the identification of individuals, except (1) upon subpoena in a court or administrative proceeding to which the person to whom such prescription, orders or other records relate is a party, or (2) when the information reasonably leads to the conclusion that there has been a violation of *RCW 69.33.380 or 69.40.090, then the information may be referred to other law enforcement officers. [1971 ex.s. c 304 § 11.]

***Reviser's note:** "RCW 69.33.380" and "69.40.090" were repealed by 1971 ex.s. c 308 § 69.50.606.

Title 70

PUBLIC HEALTH AND SAFETY

<p>Chapters</p> <p>70.01 General provisions.</p> <p>70.05 Local health departments, boards, officers—Regulations.</p> <p>70.08 Combined city—county health departments.</p> <p>70.10 Comprehensive community health centers.</p> <p>70.12 Public health funds.</p> <p>70.16 Health precautions at seaports.</p> <p>70.20 Pesthouses, quarantines, and miscellaneous health precautions.</p> <p>70.22 Mosquito control.</p> <p>70.24 Control and treatment of venereal diseases.</p> <p>70.28 Control of tuberculosis.</p> <p>70.30 Tuberculosis hospitals and facilities.</p> <p>70.32 County and state tuberculosis funds.</p> <p>70.33 State administered tuberculosis hospital facilities.</p> <p>70.37 Health care facilities.</p> <p>70.38 Health planning and resources development.</p> <p>70.39 Hospital health care services—Hospital commission.</p> <p>70.40 Hospital and medical facilities survey and construction act.</p> <p>70.41 Hospital licensing and regulation.</p> <p>70.44 Public hospital districts.</p> <p>70.46 Health districts.</p> <p>70.48 City and county jails act.</p> <p>70.50 State otologist.</p> <p>70.54 Miscellaneous health and safety provisions.</p> <p>70.58 Vital statistics.</p> <p>70.62 Transient accommodations—Licensing—Inspections.</p> <p>70.70 Sale or use of shoddy.</p> <p>70.74 Washington state explosives act.</p> <p>70.75 Fire fighting equipment—Standardization.</p> <p>70.77 State fireworks law.</p> <p>70.79 Boilers and unfired pressure vessels.</p> <p>70.82 Cerebral palsy program.</p> <p>70.83 Phenylketonuria and other preventable heritable disorders.</p> <p>70.84 Blind, handicapped and disabled persons—"White cane law".</p> <p>70.85 Emergency party line telephone calls—Limiting telephone communication in hostage situations.</p> <p>70.86 Earthquake resistance standards.</p> <p>70.87 Elevators, lifting devices, and moving walks.</p> <p>70.88 Conveyances for persons in recreational activities.</p> <p>70.89 Safety glazing material.</p> <p>70.90 Swimming pools.</p>	<p>70.92 Provisions in buildings for aged and handicapped persons.</p> <p>70.93 Model litter control and recycling act.</p> <p>70.94 Washington clean air act.</p> <p>70.95 Solid waste management—Recovery and recycling.</p> <p>70.95A Pollution control—Municipal bonding authority.</p> <p>70.95B Domestic waste treatment plants—Certification and regulation of operators.</p> <p>70.96 Alcoholism.</p> <p>70.96A Uniform alcoholism and intoxication treatment.</p> <p>70.98 Nuclear energy and radiation.</p> <p>70.100 Eye protection—Public and private educational institutions.</p> <p>70.104 Pesticides—Health hazards.</p> <p>70.105 Hazardous waste disposal.</p> <p>70.106 Hazardous substances and articles (Washington Poison Prevention Act of 1974).</p> <p>70.107 Noise control.</p> <p>70.108 Outdoor music festivals.</p> <p>70.110 Flammable fabrics—Children's sleepwear.</p> <p>70.112 Family medicine—Education and residency programs.</p> <p>70.114 Migrant labor housing.</p> <p>70.115 Drug injection devices.</p> <p>70.116 Public water system coordination act of 1977.</p> <p>70.117 Skiing and commercial ski activity.</p> <p>70.118 On-site sewage disposal systems.</p> <p>70.119 Public water supply systems—Certification and regulation of operators.</p> <p>70.120 Motor vehicle emission control.</p> <p>70.121 Mill tailings—Licensing and perpetual care.</p> <p>70.122 Natural Death Act.</p> <p>70.123 Shelters for victims of domestic violence.</p> <p>70.124 Abuse of nursing home patients.</p> <p>70.125 Victims of sexual assault act.</p>
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Adoption of children through hospitals, doctors, midwives, etc.: RCW 26.36.040.

Ambulance, first aid equipment—Third class cities, towns: RCW 35.24.306, 35.27.370(16).

Asbestos, regulation of use: Chapter 49.26 RCW.

Autopsies, post mortems: Chapter 68.08 RCW.

Board of health and bureau of vital statistics authorized: State Constitution Art. 20 § 1.

Board of health, state: Chapter 43.20 RCW.

Child agencies: Chapter 26.36 RCW.

Civil defense: Chapter 38.52 RCW.

Comic books: Chapter 19.18 RCW.
Control of pet animals infected with diseases communicable to humans: Chapter 16.70 RCW.
Dangerous caustic and corrosive substances: Chapter 69.36 RCW.
Department of social and health services: Chapter 43.20A RCW.
Displaced homemaker act: Chapter 28B.04 RCW.
Donation of human remains for medical purposes: RCW 68.08.250-68.08.290.
Electricians and electrical installations: Chapter 19.28 RCW.
Female and child labor: Chapter 49.12 RCW.
Fire marshal: Chapter 48.48 RCW.
Food processing act: Chapter 69.07 RCW
Glue sniffing: Chapter 9.47A RCW.
Health care services: Chapter 48.44 RCW.
Health measures in public schools: Chapter 28A.31 RCW, RCW 28A.60.320.
Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.
Immunization program, local health department participation: RCW 28A.31.100-28A.31.122.
Industrial safety and health: Chapter 49.17 RCW.
Mentally ill, private establishments for care: Chapter 71.12 RCW.
Milk and milk products for animal food: Chapter 15.37 RCW.
Natural gas, regulations: RCW 80.28.210.
Nuclear energy promotion and development, powers and duties of department of commerce and economic development: RCW 43.31-280-43.31.330.
Regulation of passenger watercraft for hire: Chapter 88.04 RCW.
Safety in coal mines: Title 78 RCW.
Safety with respect to electrical construction: Chapter 19.29 RCW.
Sale or gift of tobacco or intoxicating liquor to minor is gross misdemeanor: RCW 26.28.080.
Sanitary control of shellfish: Chapter 69.30 RCW.
Social and health services, department of: Chapter 43.20A RCW.
State board of health: Chapter 43.20 RCW.
State coordinator of search and rescue operations: RCW 38.52.030.
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Water pollution control: Chapter 90.48 RCW.

**Chapter 70.01
 GENERAL PROVISIONS**

Sections	
70.01.010	Cooperation with federal government—Construction.
70.01.020	Donation of blood by person eighteen or over without parental consent authorized.

70.01.010 Cooperation with federal government—Construction. In furtherance of the policy of this state to cooperate with the federal government in the public health programs, the state board of health shall adopt such rules and regulations as may become necessary to entitle this state to participate in federal funds unless the same be expressly prohibited by law. Any section or provision of the public health laws of this state which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal funds for the various programs of public health. [1969 ex.s. c 25 § 1; 1967 ex.s. c 102 § 12.]

Sunset Act application: See note following RCW 43.20.030.
Severability—1967 ex.s. c 102: See note following RCW 43.20A.600.

70.01.020 Donation of blood by person eighteen or over without parental consent authorized. Any person of the age of eighteen years or over shall be eligible to donate blood in any voluntary and noncompensatory blood program without the necessity of obtaining parental permission or authorization. [1969 c 51 § 1.]

**Chapter 70.05
 LOCAL HEALTH DEPARTMENTS, BOARDS,
 OFFICERS—REGULATIONS**

Sections	
70.05.010	Definitions.
70.05.020	Cities and towns—Organization of local health boards.
70.05.030	Counties—Board of county commissioners to constitute local health board—Jurisdiction.
70.05.040	Local board of health—Chairman—Clerk—Vacancies.
70.05.050	Local health officer—Appointment—Term—Employment of personnel—Salary and expenses.
70.05.051	Local health officer—Qualifications.
70.05.053	Provisionally qualified local health officers—Appointment—Term—Requirements.
70.05.054	Provisionally qualified local health officers—In-service public health orientation program.
70.05.055	Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer.
70.05.060	Powers and duties of local board of health.
70.05.070	Local health officer—Powers and duties.
70.05.080	Local health officer—Failure to appoint—Procedure.
70.05.090	Physicians to report diseases.
70.05.100	Who determines character of disease.
70.05.110	Local health officials and physicians to report contagious diseases.
70.05.120	Violations—Remedies—Penalties.
70.05.130	Expenses of enforcing laws and regulations.
70.05.135	Treasurer—District funds—Contributions by counties and cities.
70.05.140	Expenses of providing public health services—Payment by counties and cities—Procedure on failure to pay.
70.05.150	Contracts for sale or purchase of health services authorized.

Health districts: Chapter 70.46 RCW.

70.05.010 Definitions. For the purposes of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 and unless the context thereof clearly indicates to the contrary:

(1) "Local health departments" means the city, town, county or district which provides public health services to persons within the area;

(2) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county or district public health department;

(3) "Local board of health" means the city, town, county or district board of health.

(4) "Health district" means all territory encompassed within a single county and all cities and towns therein except cities with a population of over one hundred thousand, or all the territory consisting of one or more counties and all the cities and towns in all of the combined counties except cities of over one hundred thousand population which have been combined and

organized pursuant to the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090: *Provided*, That cities with a population of over one hundred thousand may be included in a health district as provided in RCW 70.46.040. [1967 ex.s. c 51 § 1.]

Severability—1967 ex.s. c 51: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 51 § 24.] This applies to chapter 70.05 RCW and RCW 70.46.020 through 70.46.090.

70.05.020 Cities and towns—Organization of local health boards. The governing body of every city or town in this state, except where such city or town is a part of a county health department, a health district, or is purchasing health services under a contract as authorized by chapter 70.05 RCW and RCW 70.46.020 through 70.46.090, shall hereafter organize as a local board of health or shall appoint a local board of health from its members of at least three persons who shall organize as a local board of health for such city or town. [1967 ex.s. c 51 § 2.]

70.05.030 Counties—Board of county commissioners to constitute local health board—Jurisdiction. The board of county commissioners of each and every county in this state, except where such county is a part of a health district or is purchasing services under a contract as authorized by chapter 70.05 RCW and RCW 70.46.020 through 70.46.090, shall constitute the local board of health for such county, and said local board of health's jurisdiction shall be coextensive with the boundaries of said county, except that nothing herein contained shall give said board jurisdiction in cities of over one hundred thousand population or in such other cities and towns as are providing health services which meet health standards pursuant to RCW 70.46.090. [1967 ex.s. c 51 § 3.]

70.05.040 Local board of health—Chairman—Clerk—Vacancies. The local board of health shall elect a chairman and may appoint a clerk, and shall appoint a local health officer pursuant to RCW 70.05.050. Vacancies on the local board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. At the first meeting of the local board of health, the members shall elect a chairman to serve for a period of one year. [1967 ex.s. c 51 § 4.]

70.05.050 Local health officer—Appointment—Term—Employment of personnel—Salary and expenses. Each local board of health shall appoint a local health officer who shall be an experienced physician licensed to practice medicine and surgery or osteopathy and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the office of local health officer. No term of office shall be established for the local health officer but he shall not be removed until after notice is given him, and an opportunity for a hearing before the board as to the reason for his removal. He shall act as executive secretary

to, and administrative officer for the local board of health. He shall also be empowered to employ such technical and other personnel as approved by the local board of health. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. [1969 ex.s. c 114 § 1; 1967 ex.s. c 51 § 9.]

70.05.051 Local health officer—Qualifications. The following persons holding licenses as required by RCW 70.05.050 shall be deemed qualified to hold the position of local health officer:

(1) Persons holding the degree of master of public health or its equivalent;

(2) Persons not meeting the requirements of subsection (1) of this section, who upon August 11, 1969 are currently employed in this state as a local health officer and whom the secretary of social and health services recommends in writing to the local board of health as qualified; and

(3) Persons qualified by virtue of completing three years of service as a provisionally qualified officer pursuant to RCW 70.05.053 through 70.05.055. [1979 c 141 § 75; 1969 ex.s. c 114 § 2.]

70.05.053 Provisionally qualified local health officers—Appointment—Term—Requirements. Persons holding licenses required by RCW 70.05.050 but not meeting any of the requirements for qualification prescribed by RCW 70.05.051 may be appointed by local health boards as provisionally qualified local health officers for a maximum period of three years upon the following conditions and in accordance with the following procedure:

(1) He shall participate in an in-service orientation to the field of public health as provided in RCW 70.05.054, and

(2) He shall satisfy the secretary of social and health services pursuant to the periodic interviews prescribed by RCW 70.05.055 that he has successfully completed such in-service orientation and is conducting such program of good health practices as may be required by the jurisdictional area concerned. [1979 c 141 § 76; 1969 ex.s. c 114 § 3.]

70.05.054 Provisionally qualified local health officers—In-service public health orientation program. The secretary of social and health services shall provide an in-service public health orientation program for the benefit of provisionally qualified local health officers.

Such program shall consist of—

(1) A three months course in public health training conducted by the secretary either in the state department of social and health services, in a county and/or city health department, in a local health district, or in an institution of higher education; or

(2) An on-the-job, self-training program pursuant to a standardized syllabus setting forth the major duties of a local health officer including the techniques and practices of public health principles expected of qualified local health officers: *Provided*, That each provisionally qualified local health officer may choose which type of

training he shall pursue. [1979 c 141 § 77; 1969 ex.s. c 114 § 4.]

70.05.055 Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer. Each year, on a date which shall be as near as possible to the anniversary date of appointment as provisional local health officer, the secretary of social and health services or his designee shall personally visit such provisional officer's office for a personal review and discussion of the activity, plans, and study being carried on relative to the provisional officer's jurisdictional area: *Provided*, That the third such interview shall occur three months prior to the end of the three year provisional term. A standardized checklist shall be used for all such interviews, but such checklist shall not constitute a grading sheet or evaluation form for use in the ultimate decision of qualification of the provisional appointee as a public health officer.

Copies of the results of each interview shall be supplied to the provisional officer within two weeks following each such interview.

Following the third such interview, the secretary of social and health services shall evaluate the provisional local health officer's in-service performance and shall notify such officer by certified mail of his decision whether or not to qualify such officer as a local public health officer. Such notice shall be mailed at least sixty days prior to the third anniversary date of provisional appointment. Failure to so mail such notice shall constitute a decision that such provisional officer is qualified. [1979 c 141 § 78; 1969 ex.s. c 114 § 5.]

70.05.060 Powers and duties of local board of health.

Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:

(1) Enforce through the local health officer the public health statutes of the state and rules and regulations promulgated by the state board of health and the secretary of social and health services;

(2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;

(3) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;

(4) Provide for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department;

(5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;

(6) Make such reports to the state board of health through the local health officer as the state board of health may require; and

(7) Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules and regulations of the state board of health: *Provided*, That such fees for services shall not exceed the actual cost of providing any such services. [1979 c 141 § 79; 1967 ex.s. c 51 § 10.]

70.05.070 Local health officer—Powers and duties. The local health officer shall:

(1) Enforce the public health statutes of the state, rules and regulations of the state board of health and the secretary of social and health services, and all local health rules, regulations and ordinances within his jurisdiction;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of social and health services or his authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules and regulations of the state board of health.

(8) Take such measures as he deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department. [1979 c 141 § 80; 1967 ex.s. c 51 § 12.]

70.05.080 Local health officer—Failure to appoint—Procedure. In case of the refusal or neglect of any local board of health to appoint a local health officer after a vacancy exists, the secretary of social and health services may appoint a local health officer and fix the compensation and the local health officer so appointed shall have the same duties, powers and authority as though appointed by the local boards of health. Such local health officer shall serve until such time as the local board of health appoints a qualified individual in his place. The board shall be authorized to appoint an acting health officer to serve whenever the health officer is absent or incapacitated and unable to fulfill his responsibilities under the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090. [1979 c 141 § 81; 1967 ex.s. c 51 § 13.]

70.05.090 Physicians to report diseases. Whenever any physician shall attend any person sick with any dangerous contagious or infectious disease, or with any diseases required by the state board of health to be reported, he shall, within twenty-four hours, give notice thereof to the local health officer within whose jurisdiction such sick person may then be or to the state department of social and health services in Olympia. [1979 c 141 § 82; 1967 ex.s. c 51 § 14.]

70.05.100 Who determines character of disease. In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state department of social and health services can be notified, and then the opinion of the executive officer of the state department of social and health services, or any physician he may appoint to examine such case, shall be final. [1979 c 141 § 83; 1967 ex.s. c 51 § 15.]

70.05.110 Local health officials and physicians to report contagious diseases. It shall be the duty of the local board of health, health authorities or officials, and of physicians in localities where there are no local health authorities or officials, to report to the state board of health, promptly upon discovery thereof, the existence of any one of the following diseases which may come under their observation, to wit: Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus, typhoid fever, bubonic plague or leprosy, and of such other contagious or infectious diseases as the state board may from time to time specify. [1967 ex.s. c 51 § 16.]

Sunset Act application: See note following RCW 43.20.030.

70.05.120 Violations—Remedies—Penalties. Any local health officer who shall refuse or neglect to obey or enforce the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.04 RCW, and the rules and regulations of the state board of health adopted thereunder.

Any member of a local board of health who shall violate any of the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars. Any physician who shall refuse or neglect to report to the proper health officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more

than two hundred dollars for each case that is not reported.

Any person violating any of the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment. [1967 ex.s. c 51 § 17.]

70.05.130 Expenses of enforcing laws and regulations. All expenses incurred by the state, health district, or county in carrying out the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or any other public health law, or the rules and regulations of the state department of social and health services enacted under such laws, shall be paid by the county or city by which or in behalf of which such expenses shall have been incurred and such expenses shall constitute a claim against the general fund as provided herein. [1979 c 141 § 84; 1967 ex.s. c 51 § 18.]

70.05.135 Treasurer—District funds—Contributions by counties and cities. See RCW 70.46.080.

70.05.140 Expenses of providing public health services—Payment by counties and cities—Procedure on failure to pay. See RCW 70.46.085.

70.05.150 Contracts for sale or purchase of health services authorized. In addition to powers already granted them, any city, town, county, district or local health department may contract for either the sale or purchase of any or all health services from any local health department: *Provided*, That such contract shall require the approval of the state board of health. [1967 ex.s. c 51 § 22.]

**Chapter 70.08
COMBINED CITY-COUNTY HEALTH
DEPARTMENTS**

Sections	
70.08.010	Combined city-county health departments— Establishment.
70.08.020	Director of public health—Powers and duties.
70.08.030	Qualifications.
70.08.040	Appointment—Salary—Terms of office.
70.08.050	May act as health officer for other cities or towns.
70.08.060	Director of public health shall be registrar of vital statistics.

- 70.08.070 Employees may be included in city civil service, retirement plans.
- 70.08.080 Pooling of funds.
- 70.08.090 Other cities or agencies may contract for services.
- 70.08.100 Termination of agreement to operate combined city-county health department.
- 70.08.110 Prior expenditures in operating combined health department ratified.

Control of cities and towns over water pollution: Chapter 35.88 RCW.

70.08.010 Combined city-county health departments—Establishment. Any city with one hundred thousand or more population and the county in which it is located, are authorized, as shall be agreed upon between the respective governing bodies of such city and said county, to establish and operate a combined city and county health department, and to appoint the director of public health as hereinafter provided. The combination of such city and county health department under this chapter shall be effective whenever the governing body of the city with one hundred thousand or more population shall pass an ordinance and the board of county commissioners of the county in which it is located shall pass a resolution declaring intention to operate a combined health department in accordance with agreements made between their respective governing bodies. [1949 c 46 § 1; Rem. Supp. 1949 § 6099–30.]

70.08.020 Director of public health—Powers and duties. The director of public health is authorized to and shall exercise all powers and perform all duties by law vested in the county health officer, and is authorized to and shall exercise all powers and perform all duties by law vested in the health officer of said city of one hundred thousand population or more. [1949 c 46 § 2; Rem. Supp. 1949 § 6099–31.]

70.08.030 Qualifications. The director of public health, under this chapter shall be a qualified physician or surgeon having graduated at least five years prior to appointment, shall in addition to his professional degree also hold the degree of master of public health or its equivalent, and shall have had at least three years' practical experience in public health administrative work. He shall not engage in the private practice of his profession during his tenure of office. He shall not be included in the classified civil service of the said city or the said county. [1949 c 46 § 3; Rem. Supp. 1949 § 6099–32.]

70.08.040 Appointment—Salary—Terms of office. The director of public health under this chapter shall be appointed by the mayor of the city of one hundred thousand population or more, such appointment to be effective only upon a majority vote confirmation of each governing body of said city and said county. He shall be paid such salary and allowed such expenses as shall be determined annually by the governing bodies of said city and said county. He shall hold office for an indefinite term and may be removed at any time by the mayor of said city only for cause shown and after public hearing on charges reduced to writing, a copy of such charges having first been filed ten days prior to such public hearing with the governing bodies of said city and

of said county. [1949 c 46 § 4; Rem. Supp. 1949 § 6099–33.]

70.08.050 May act as health officer for other cities or towns. Nothing in this chapter shall prohibit the director of public health as provided herein from acting as health officer for any other city or town within the county, nor from acting as health officer in any adjoining county or any city or town within such county having a contract or agreement as provided in RCW 70.08.090: *Provided, however,* That before being appointed health officer for such adjoining county, the secretary of social and health services shall first give his approval thereto. [1979 c 141 § 85; 1949 c 46 § 8; Rem. Supp. 1949 § 6099–37.]

70.08.060 Director of public health shall be registrar of vital statistics. The director of public health under this chapter shall be registrar of vital statistics for all cities and counties under his jurisdiction and shall conduct such vital statistics work in accordance with the same laws and/or rules and regulations pertaining to vital statistics for a city of the first class. [1961 ex.s. c 5 § 4; 1949 c 46 § 9; Rem. Supp. 1949 § 6099–38.]

Vital statistics: Chapter 70.58 RCW.

70.08.070 Employees may be included in city civil service, retirement plans. All employees of the combined city and county health department except those already covered by civil service and retirement plans, may upon passage of an ordinance by the city, be included in the civil service and retirement plans of such city: *Provided,* That residential requirements for such positions shall be coextensive with the county boundaries: *Provided further,* That the county is authorized to pay such parts of the expense of operating and maintaining such civil service and retirement system and to contribute to the retirement fund in behalf of employees such sums as may be agreed upon between the governing bodies of such city and county. [1949 c 46 § 5; Rem. Supp. 1949 § 6099–34.]

70.08.080 Pooling of funds. The city by ordinance, and the county by resolution, under this chapter may pool all or any part of their respective funds available for public health purposes, in the office of the city treasurer in a special pooling fund to be established in accordance with agreements between the governing bodies of said city and county and which shall be expended for the combined health department. [1949 c 46 § 6; Rem. Supp. 1949 § 6099–35.]

70.08.090 Other cities or agencies may contract for services. Any other city in said county, other governmental agency or any charitable or health agency may by contract or by agreement with the governing bodies of the combined health department receive public health services. [1949 c 46 § 7; Rem. Supp. 1949 § 6099–36.]

70.08.100 Termination of agreement to operate combined city-county health department. Agreement to operate a combined city and county health department

made under this chapter may after two years from the date of such agreement, be terminated by either party at the end of any calendar year upon notice in writing given at least six months prior thereto. The termination of such agreement shall not relieve either party of any obligations to which it has been previously committed. [1949 c 46 § 10; Rem. Supp. 1949 § 6099-39.]

70.08.110 Prior expenditures in operating combined health department ratified. Any expenditures heretofore made by a city of one hundred thousand population or more, and by the county in which it is located, not made fraudulently and which were within the legal limits of indebtedness, towards the expense of maintenance and operation of a combined health department, are hereby legalized and ratified. [1949 c 46 § 11; Rem. Supp. 1949 § 6099-40.]

Chapter 70.10

COMPREHENSIVE COMMUNITY HEALTH CENTERS

Sections

- 70.10.010 Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing.
- 70.10.020 "Comprehensive community health center" defined.
- 70.10.030 Authorization to apply for and administer federal and/or state funds.
- 70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center.
- 70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms.
- 70.10.060 Adoption of rules and regulations—Liberal construction of chapter.

Community mental health centers: Chapter 71.16 RCW.
Community mental health services act: Chapter 71.24 RCW.
Mental health and retardation services, interstate contracts: Chapter 71.28 RCW.

70.10.010 Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing. It is declared to be the policy of the legislature of the state of Washington that, wherever feasible, community health, mental health and mental retardation services shall be combined within single facilities in order to provide maximum utilization of available funds and personnel, and to assure the greatest possible coordination of such services for the benefit of those requiring them. It is further declared to be the policy of the legislature to authorize the state to cooperate with counties, cities, and other municipal corporations in order to encourage them to take such steps as may be necessary to construct comprehensive community health centers in communities throughout the state. [1967 ex.s. c 4 § 1.]

70.10.020 "Comprehensive community health center" defined. The term "comprehensive community health

center" as used in this chapter shall mean a health facility housing community health, mental health, and developmental disabilities services. [1977 ex.s. c 80 § 37; 1967 ex.s. c 4 § 2.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.030 Authorization to apply for and administer federal and/or state funds. The several agencies of the state authorized to administer within the state the various federal acts providing federal moneys to assist in the cost of establishing community health, mental health, and mental retardation facilities, are authorized to apply for and disburse federal grants, matching funds, or other funds, including gifts or donations from any source, available for use by counties, cities, other municipal corporations or nonprofit corporations. Upon application, these agencies shall also be authorized to distribute such state funds as may be appropriated by the legislature for such local construction projects: *Provided*, That where state funds have been appropriated to assist in covering the cost of constructing a comprehensive community health center, or a community health, mental health, or mental retardation facility, and where any county, city, other municipal corporation or nonprofit corporation has submitted an approved application for such state funds, then, after any applicable federal grant has been deducted from the total cost of construction, the state agency or agencies in charge of each program may allocate to such applicant an amount not to exceed fifty percent of that particular program's contribution toward the balance of remaining construction costs. [1967 ex.s. c 4 § 3.]

70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center. Any application for federal or state funds to be used for construction of the community health, mental health, or developmental disabilities facility, which will be part of the comprehensive community health center as defined in RCW 70.10.020, shall be separately processed and approved by the state agency which has been designated to administer the particular federal or state program involved. Any application for federal or state funds for a construction project to establish a community health, mental health, or developmental disabilities facility not part of a comprehensive health center shall be processed by the state agency which is designated to administer the particular federal or state program involved. This agency shall also forward a copy of the application to the other agency or agencies designated to administer the program or programs providing funds for construction of the facilities which make up a comprehensive health center. The agency or agencies receiving this copy of the application shall have a period of time not to exceed sixty days in which to file a statement with the agency to which the application has been submitted and to any statutory advisory council or committee which has been designated to advise the administering agency with regard to the

program, stating that the proposed facility should or should not be part of a comprehensive health center. [1977 ex.s. c 80 § 38; 1967 ex.s. c 4 § 4.]

~~Purpose~~—~~Intent~~—~~Severability~~—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms. The several state agencies processing applications for the construction of comprehensive health centers for community health, mental health, or developmental disability facilities shall cooperate to develop general procedures to be used in implementing the statute and to attempt to develop application forms and procedures which are as nearly standard as possible, after taking cognizance of the different information required in the various programs, to assist applicants in applying to various state agencies. [1977 ex.s. c 80 § 39; 1967 ex.s. c 4 § 5.]

~~Purpose~~—~~Intent~~—~~Severability~~—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.060 Adoption of rules and regulations—Liberal construction of chapter. In furtherance of the legislative policy to authorize the state to cooperate with the federal government in facilitating the construction of comprehensive community health centers, the state agencies involved shall adopt such rules and regulations as may become necessary to entitle the state and local units of government to share in federal grants, matching funds, or other funds, unless the same be expressly prohibited by this chapter. Any section or provision of this chapter susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling the state and local units of government to receive federal grants, matching funds or other funds for the construction of comprehensive community health centers. [1967 ex.s. c 4 § 6.]

Chapter 70.12

PUBLIC HEALTH FUNDS

Sections

COUNTY FUNDS

70.12.015 Secretary may expend funds in counties.
70.12.020 Expenditures authorized.
70.12.025 County funds for public health.

PUBLIC HEALTH POOLING FUND

70.12.030 Public health pooling fund authorized—"Health district" defined.
70.12.040 Fund, how maintained and disbursed.
70.12.050 Expenditures from fund.
70.12.060 Expenditures geared to budget.
70.12.070 Fund subject to audit and check by state.

COUNTY FUNDS

70.12.015 Secretary may expend funds in counties. The secretary of social and health services is hereby authorized to apportion and expend such sums as he

shall deem necessary for public health work in the counties of the state, from the appropriations made to the state department of social and health services for county public health work. [1979 c 141 § 86; 1939 c 191 § 2; RRS § 6001-1. Formerly RCW 70.12.080.]

70.12.020 Expenditures authorized. Each board of county commissioners is hereby authorized and directed to expend the sum budgeted under *this act, or so much thereof as may be necessary, for public health work. [1939 c 191 § 3; RRS § 6094-1.]

*Reviser's note: The language "this act" appears in 1939 c 191 codified as RCW 70.12.010 through 70.12.020.

70.12.025 County funds for public health. Each county legislative authority shall annually budget and appropriate a sum for public health work. [1975 1st ex.s. c 291 § 2.]

~~Effective dates~~—~~Severability~~—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

PUBLIC HEALTH POOLING FUND

70.12.030 Public health pooling fund authorized—"Health district" defined. Any county, first class city or health district is hereby authorized and empowered to create a "public health pooling fund", hereafter called the "fund", for the efficient management and control of all moneys coming to such county, first class city or district for public health purposes.

"Health district" as used herein may mean all territory consisting of one or more counties and all cities with a population of one hundred thousand or less, and towns therein. [1945 c 46 § 1; 1943 c 190 § 1; Rem. Supp. 1945 § 6099-1.]

70.12.040 Fund, how maintained and disbursed. Any such fund may be established in the county treasurer's office or the city treasurer's office of a first class city according to the type of local health department organization existing.

In a district composed of more than one county, the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of receipts and disbursements; and shall draw and the county treasurer shall honor and pay all such warrants.

Into any such fund so established may be paid:

- (1) All grants from any state fund for county public health work;
- (2) All county funds collected by county levy as set forth in *RCW 70.12.010;
- (3) Any county current expense funds appropriated for the health department;
- (4) Any other money appropriated by the county for health work;
- (5) City funds appropriated for the health department;
- (6) All moneys received from any governmental agency, local, state or federal which may contribute to the local health department; and

(7) Any contributions from any charitable or voluntary agency or contributions from any individual or estate.

Any school district may contract in writing for health services with the health department of the county, first class city or health district, and place such funds in the public health pooling fund in accordance with the contract. [1945 c 46 § 2; 1943 c 190 § 2; Rem. Supp. 1945 § 6099-2.]

*Reviser's note: RCW 70.12.010 was repealed by 1975 1st ex.s. c 291 § 24.

70.12.050 Expenditures from fund. All expenditures in connection with salaries, wages and operations incurred in carrying on the health department of the county, first class city or health district shall be paid out of such fund. [1945 c 46 § 3; 1943 c 190 § 3; Rem. Supp. 1945 § 6099-3.]

70.12.060 Expenditures geared to budget. Any fund established as herein provided shall be expended so as to make the expenditures thereof agree with any respective appropriation period. Any accumulation in any such fund so established shall be taken into consideration when preparing any budget for the operations for the ensuing year. [1943 c 190 § 4; Rem. Supp. 1943 § 6099-4.]

70.12.070 Fund subject to audit and check by state. The public health pool fund shall be subject to audit by the division of departmental audits and shall be subject to check by the state department of social and health services. [1979 c 141 § 87; 1943 c 190 § 5; Rem. Supp. 1943 § 6099-5.]

Chapter 70.16

HEALTH PRECAUTIONS AT SEAPORTS

Sections

70.16.010	County health board—Duties—Health officer.
70.16.020	Residence of health officer—Quarantine of vessels and passengers.
70.16.030	Disinfection of goods from infected vessels—Fees.
70.16.040	Failure to obey orders—Penalty.
70.16.050	Infected persons may be taken ashore.
70.16.060	Breaking quarantine—Penalty.
70.16.070	Entering quarantined vessel or area.
70.16.080	Quarantine flag—Display—Penalty.
70.16.090	Docking infected vessel, false declarations, etc.—Penalty.
70.16.100	Failure to move vessel to quarantine—Penalty.
70.16.110	Notification of health officers—Penalty.
70.16.120	Vessels to anchor at distance.
70.16.130	Penalty.
70.16.140	Entry of vessels against quarantine—Penalty.
70.16.150	Vessel to perform quarantine—Penalty.
70.16.160	Duty of pilots as to quarantine—Penalty.
70.16.170	City to provide quarantine flag.
70.16.180	Who may perform quarantine duties for city.
70.16.190	Expense of city quarantine.
70.16.200	Information to be furnished upon demand.

Penalty for wilful exposure to contagious disease: RCW 70.54.050.

70.16.010 County health board—Duties—Health officer. The county commissioners of the several

counties of the state of Washington shall be, and the same are hereby created and constituted, a board of health for said county, whose duty it shall be to make such regulations respecting the quarantine of ships or vessels prescribing in what case it shall be performed by vessels arriving at any port in said state of Washington as may be just and reasonable and the same modify or change as in their opinion the public safety requires, and the board of health so constituted shall appoint a health officer who shall before entering upon the duties of his office, give bonds with good and sufficient sureties to the county commissioners of the county where appointed, in the sum of one thousand dollars conditioned for the faithful performance of his duties as such health officer and shall be sworn before some officer qualified to administer oaths to perform the duties of his office to the best of his ability and which bond and oath shall be filed in the office of the county auditor. [1888 p 46 § 1; RRS § 6047. Formerly RCW 70.06.020, part and 70.16.010.]

Repeal—1888 p 50: "All acts and parts of acts in conflict with the provisions of this act are hereby repealed." [1888 p 50 § 15.]

Effective date—Construction—1888 p 50: "This act shall take effect and be in force from and after its passage and approval by the governor; *Provided*, that this act shall in no wise effect, modify or repeal Chapter CLXI of the code of Washington in relation to the prevention or spread of contagious diseases in cities and towns, or Chapter CLIX of said code in relation to the quarantine of vessels or any general or special municipal charter or any general law heretofore enacted upon this subject." [1888 p 50 § 16.]

The foregoing annotations apply to RCW 70.16.010 through 70.16.110 and 70.20.010 through 70.20.030.

Appointment of county health officer: RCW 70.05.030.

70.16.020 Residence of health officer—Quarantine of vessels and passengers. The health officer shall reside within the county where appointed and shall require all vessels having on board any person or persons infected with smallpox, plague, pestilential or malignant fever or other malignant, infectious or contagious diseases or who shall have been so infected during the voyage or having on board any goods reasonably supposed to have any infections of such disease to perform quarantine at some safe, suitable and convenient place selected and designated for the purpose by the board of health and order the master or other person having charge or control of such vessel to proceed with such vessel and anchor at such designated place there to remain and be purified and cleansed as he may direct, and a suitable place on shore may be prescribed and properly limited for the landing, care, treatment and purification of any person or passenger of such vessel. [1888 p 46 § 2; RRS § 6048. Formerly RCW 70.06.020, part and 70.16.020.]

70.16.030 Disinfection of goods from infected vessels—Fees. The board of health may, and it shall be their duty to seize any goods landed from any such infected vessel without the permission of the health officer and remove and keep the same until they have caused them, the said goods to be thoroughly cleansed and purified and which cleansing and purification shall be performed by or under the direction of the health officer with all possible dispatch at which time such goods shall be turned over to the care and custody of the person

properly claiming the same upon payment by the person so claiming paying the expense of such removal and purification and upon the failure of the health officer to turn over to such person any such goods agreeable to the provisions of this section he shall be liable for all damages that may arise from such failure and which may be recovered by suit in any court of competent jurisdiction together with costs of suit. That the fees of the health officer shall be fixed by the board of health provided for in *this act but shall not exceed the sum of five dollars for each vessel boarded or examined in the daytime and ten dollars in the nighttime between the hours of ten p.m., and five p.m., nor the sum of fifteen dollars for fumigating a vessel which fee shall be paid [by the owner or agent of said] vessel and shall be a lien on said vessel until paid and no vessel shall receive a bill of health or clearance until such fee is paid and the health officer may recover such fee together with the cost of suit in any court having jurisdiction. [1888 p 47 § 3; RRS § 6049.]

***Reviser's note:** The language "this act" refers to 1888 p 46 §§ 1 through 14 codified as RCW 70.16.010 through 70.16.110 and 70.20.010 through 70.20.030.

70.16.040 Failure to obey orders—Penalty. Any owner, master, supercargo officer, seaman, consignee or any other person who shall refuse or neglect to obey the orders and regulations of the board of health in regard to such quarantine or the purification and cleansing of such vessel shall be punished by fine not exceeding one thousand dollars or by imprisonment not exceeding three months, or both. [1888 p 47 § 4; RRS § 6050.]

70.16.050 Infected persons may be taken ashore. Any person sick on board any such vessel may be sent on shore by said health officer at some place appointed and limited for the purpose and shall there be maintained, provided and cleansed by or under the direction of the health officer at the expense of such sick or infected person if able, otherwise at the expense of the vessel in which the person or persons may have been brought into any of the ports or waters of the state of Washington or bordering on said state. [1888 p 47 § 5; RRS § 6051.]

70.16.060 Breaking quarantine—Penalty. If any person shall come on shore from any vessel infected or justly suspected of being so subjected to or performing quarantine or shall leave the place appointed for the sick or for purification, being placed there or employed or placed there by the health officer without permission of such officer he or she shall be fined not exceeding one thousand dollars or imprisoned not exceeding three months, or both. [1888 p 47 § 6; RRS § 6052.]

70.16.070 Entering quarantined vessel or area. If any person shall without permission of the health officer go on board any vessel ordered for or performing quarantine or go within the limits appointed by the health officer for the reception of infected persons and property on shore, he or she shall be considered as infected and shall be held to undergo purification in the same manner and under the same regulations and penalties as those who

are performing quarantine and shall remain there at his or her own expense until discharged by the health officer and any person coming into any such place having been previously disguised [designated] as a place for infected persons or property or on board any vessel ordered to or performing quarantine and having at the time the lawful flag as hereinafter described hoisted to the masthead without permission of the health officer he may be forcibly detained by the person or persons there employed by the health officer till he shall have undergone purification in the same manner and under the same regulations as those performing quarantine. [1888 p 48 § 7; RRS § 6053.]

70.16.080 Quarantine flag—Display—Penalty. A red flag at least six feet long and four feet wide shall be hoisted from sunrise to sunset at the main truck of any and all vessels ordered for and performing quarantine failing in which the vessel shall be liable to a fine of five hundred dollars, provided, the master or other person having the care and custody of any such vessel shall first be notified of such regulation and have sufficient time and opportunity to procure said flag. A flag as hereinbefore described, shall also be conspicuously displayed at the place designated by the board of health for the reception of infected persons and property on shore in default of which the officer or officers having the control of such infected place shall forfeit his appointment and shall also be liable to a fine of fifty dollars to be recovered before any justice of the peace by any person suing for the same. [1888 p 48 § 8; RRS § 6054.]

70.16.090 Docking infected vessel, false declarations, etc.—Penalty. If any master, owner, supercargo, officer, seaman, or consignee of any vessel or any other person knowing such vessel to be subject to quarantine shall bring or suffer the same to be brought to or near any wharf, store or dwelling house or other building not in use for the purpose of the health officer in his official capacity as such or shall make any false declaration as to the port or place from which such vessel came or in regard to the condition and health of any person on board any such vessel or shall cause, aid or permit the landing of any person or property of any nature or kind whatever from such vessel without the permission of the health officer, he shall be punished by fine not exceeding five thousand dollars or imprisonment not exceeding three months or both. [1888 p 48 § 9; RRS § 6055.]

70.16.100 Failure to move vessel to quarantine—Penalty. If any such vessel shall not be removed to the place of quarantine agreeably to the directions of the health officer or shall be brought near any wharf, store or dwelling house or other building without his permission, the health officer shall cause such vessel to be forthwith removed to such place there to remain at the risk of the owners till expiration of the time limited by the health officer, and the expense of removal shall be paid by the master, owner or consignee who shall severally be liable therefor and may be recovered by the board of health together with costs of suit in any court having jurisdiction. [1888 p 49 § 10; RRS § 6056.]

70.16.110 Notification of health officers—Penalty. The master of every vessel arriving at any port in any county in the state of Washington or at any port in the waters bordering on said state, having on board any person infected with plague, smallpox or other malignant, infectious or pestilential disease, or who have been so infected during the voyage or having on board any goods which may reasonably be supposed to have any infection of such disease shall forthwith give notice thereof to the health officer, [;] if any such master or other person having charge of such vessel shall neglect to give such notice, he shall be fined not exceeding five thousand dollars or may be imprisoned not exceeding six months or both. [1888 p 49 § 11; RRS § 6057.]

70.16.120 Vessels to anchor at distance. When a vessel or steamer arrives at any seaport in this state, having on board any person infected with any malignant disease, the master, commander, or pilot thereof shall anchor it at some convenient place below the town or city of such seaport, at a distance safe for the inhabitants thereof and the persons on board other vessels or steamers in the port; and no person or thing on board shall be brought on shore until the municipal or health officers give them written permit so to do. [Code 1881 § 2220; RRS § 6077.]

70.16.130 Penalty. For the wilful violation of the provisions of RCW 70.16.120, such master or commander shall forfeit not exceeding two hundred dollars, and the pilot not exceeding fifty dollars for such offense. [Code 1881 § 2221; RRS § 6078.]

70.16.140 Entry of vessels against quarantine—Penalty. When the master or commander of any vessel or steamer takes either of them up to any seaport, town or city, after notice that a quarantine has been so directed for all vessels or steamers coming from the port or place whence his vessel or steamer sailed, or by false declaration, or otherwise, fraudulently attempts to elude such directions, or lands or suffers to be landed from his vessel or steamer any person or thing without permission of the municipal or health officer, he shall be punished as provided in RCW 70.16.130. [Code 1881 § 2224; RRS § 6081.]

70.16.150 Vessel to perform quarantine—Penalty. The municipal or health officers of any seaport town or city may cause any vessel or steamer arriving there, to perform quarantine at such place and under such regulations as they may judge expedient when they think the safety of the inhabitants requires it; and whoever neglects or refuses to obey such orders and regulations, shall forfeit not exceeding five hundred dollars or be imprisoned not exceeding six months. [Code 1881 § 2222; RRS § 6079.]

70.16.160 Duty of pilots as to quarantine—Penalty. When such officers of a seaport, town or city, think it necessary to order all vessels or steamers, arriving there from any particular port or ports, to perform quarantine, they shall give notice thereof to the pilots of

their port, who shall make it known to the master or commander of all vessels or steamers which they board. If any pilot neglects to do so, or contrary thereto, pilots any vessel or steamer up to said seaport, town or city, he shall forfeit not exceeding one hundred dollars. [Code 1881 § 2223; RRS § 6080.]

70.16.170 City to provide quarantine flag. The municipal or health officer of any seaport, town or city requiring vessels or steamers to perform quarantine shall provide, at the expense of such town or city, a suitable number of red flags, at least three yards in length; and the master or commander of every vessel or steamer ordered to perform quarantine shall cause one of them to be continually kept, during the term thereof, at the head of the mainmast of his vessel or steamer, and no person shall go on board such vessel or steamer during said term unless by permission of said officers. If he does, he shall be thereafter held liable to the same regulations and restrictions as those belonging to said vessel or steamer, and shall there be detained by force if necessary, until duly discharged by said officers. [Code 1881 § 2225; RRS § 6082.]

70.16.180 Who may perform quarantine duties for city. In every seaport town or city where there is a health committee or health officer, he or they may perform all the duties and exercise all the authority of municipal officers in requiring vessels or steamers to perform quarantine. [Code 1881 § 2226; RRS § 6083.]

70.16.190 Expense of city quarantine. All the expenses incurred on account of any person, vessel, or steamer or goods under quarantine regulations, shall be paid by him or the owner of the vessel or steamer, or goods, as the case may be. [Code 1881 § 2227; RRS § 6084.]

70.16.200 Information to be furnished upon demand. If any master, seaman, or passenger of any vessel, or steamer, in which there is any infection, or has lately been, or is suspected to have been, or which has come from a port where any infectious disease prevails, dangerous to the public health, refuses to answer, on oath, such questions as are asked him relating to such infection or disease, by the municipal or health officer of the town or city to which such vessel comes, which oath, either of said officers may administer, he shall forfeit not exceeding two hundred dollars, or be imprisoned not more than six months. [Code 1881 § 2219; RRS § 6076.]

Chapter 70.20

PESTHOUSES, QUARANTINES, AND MISCELLANEOUS HEALTH PRECAUTIONS

Sections

70.20.010	Pesthouses authorized.
70.20.020	Notice of regulations.
70.20.030	Disposition of fines.
70.20.040	City may quarantine infected persons.
70.20.050	Arrivals from infected areas out of state—Penalty.
70.20.060	City may order infected persons removed—Penalty.

70.20.070	Suspected travelers may be examined—Penalty.
70.20.080	Suspected baggage may be quarantined.
70.20.090	Buildings may be impressed to house suspected articles.
70.20.100	Officers may enter buildings containing infected articles—Penalty for refusal to assist.
70.20.110	Expenses, payment of.
70.20.120	Compensation for services and buildings.
70.20.130	Courts may convene in other cities.
70.20.150	Order of removal.
70.20.160	City or town may select health committee—Health officer—Powers.
70.20.165	Municipal officers as health committee.
70.20.170	Removal of filth on private property—Penalty.
70.20.180	Breaking quarantine.
70.20.185	Breaking quarantine—Penalty.

70.20.010 Pesthouses authorized. It shall be the duty of the health [officers] to appoint [appointed] under the provisions of *this act when by them deemed necessary to procure a suitable building, either by lease or construction to be used exclusively by the health officer as a pesthouse and to approve all necessary expenses of said health officer in procuring a building and keeping the same in proper repair and obtaining necessary furniture therefor, and in carrying into effect the provisions of *this act and the county commissioners of any of the several counties of the state of Washington constituting said board of health shall appropriate a sufficient sum out of any money in the treasury of said county not otherwise appropriated to pay the health officer a just and reasonable compensation for the services performed in the discharge of his duty as such health officer and the county auditor shall issue an order countersigned by said board of health on the county treasurer who shall pay the same out of any money in the treasury not otherwise appropriated. [1888 p 49 § 12; RRS § 6058.]

*Reviser's note: "this act", see note following RCW 70.16.030.

70.20.020 Notice of regulations. The board of health shall give notice in such manner as they may think reasonable and most for the public good of any and all regulations made by them under the provisions of *this act, the expense or cost of which shall be paid out of the county treasury, and the county auditor is hereby authorized to draw his warrant countersigned by said board of health on the county treasurer for the same who shall pay such bill out of any money in the treasury not otherwise appropriated. [1888 p 49 § 13; RRS § 6059.]

*Reviser's note: "this act", see note following RCW 70.16.030.

70.20.030 Disposition of fines. All fines recovered under the provisions of *this act and not otherwise provided for, be and the same shall be paid into the county treasury: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 30; 1888 p 50 § 14; RRS § 6060.]

*Reviser's note: "this act", see note following RCW 70.16.030.
Disposition of fines: Chapter 10.82 RCW.

70.20.040 City may quarantine infected persons. When any person is or has recently been infected with any disease or sickness dangerous to the public health, the municipal officers of the town or city where he or she is shall provide for the safety of the inhabitants as they think best, by removing him or her to a separate house if it can be done without great danger to his or her health, and by providing nurses and other assistants, and necessaries, at his or her charge, or that of his or her parent or master, if able; otherwise, that of the town or city to which he or she belongs. [Code 1881 § 2204; RRS § 6061.]

70.20.050 Arrivals from infected areas out of state—Penalty. When any infectious or malignant disease is known to exist in any place out of the state, the municipal officers of any town or city in the state by giving public notice therein as they find convenient, may require any person coming from such place, to inform one of them or the town or city clerk of their arrival and from what place, and if he or she does not within two hours after his or her arrival, or after actual notice of such requirement, give such information, he or she shall forfeit one hundred dollars to the use of the town or city. [Code 1881 § 2205; RRS § 6062.]

70.20.060 City may order infected persons removed—Penalty. Said officers may prohibit a person required to give such information from going to any part of their town where they may think his presence would be unsafe for the inhabitants, and if he does not comply, they may order him, unless disabled by sickness, forthwith to leave the town or city in the manner and by the road they may direct; and if he neglects or refuses so to do, any justice of any town or city, on complaint of either of said officers, may issue a warrant to any proper officer or other person named therein and cause him to be removed out of the state; and if, during the prevalence of such disease in the place where he resides, he returns to any town or city in this state, without the permission of the municipal officers thereof, he shall forfeit not exceeding one hundred dollars; and if said forfeiture is not paid he shall be imprisoned not less than three months nor more than six months. [Code 1881 § 2206; RRS § 6063.]

70.20.070 Suspected travelers may be examined—Penalty. The municipal officers of any town or city near to or adjoining the line of this state, may appoint by writing under their hands, suitable persons to attend at any places by which travelers may pass into such town or city from infected places in other states, territories and provinces, who may examine such passengers as they suspect of bringing with them any infection dangerous to the public health, and if need be, may restrain them from traveling until licensed thereto by a justice of the peace in the town or city, or one of said officers, and any such passenger who without such license, travels in this state except to return by the most direct way to the state, territory or province whence he came, after he has been cautioned to depart by the persons so appointed,

shall forfeit one hundred dollars or be imprisoned three months. [Code 1881 § 2207; RRS § 6064.]

70.20.080 Suspected baggage may be quarantined. When, on the application of the municipal officers of any town or city, it appears to any justice of the peace that there is just cause to suspect that any baggage, clothing or goods of any kind within such town or city are infected with any malignant, contagious disease, by a warrant directed to a proper officer, he shall require him to impress so many men as the justice thinks necessary to secure such infected articles, and to post said men as a guard over the house or place where the articles are lodged, who shall prevent any person removing or coming near such articles, until due inquiry is made into the circumstances thereof. [Code 1881 § 2208; RRS § 6065.]

70.20.090 Buildings may be impressed to house suspected articles. He may by the same warrant, if it appears to him necessary, require said officers under the direction of the municipal officers, to impress and take up convenient houses or other buildings for the safekeeping of such infected articles, and cause them to be removed thereto or otherwise detained, until municipal officers think they are free from infection. [Code 1881 § 2209; RRS § 6066.]

70.20.100 Officers may enter buildings containing infected articles—Penalty for refusal to assist. Said officers, if need be, may break open any house, shop or other place mentioned in the warrant where infected articles are, and require such aid as is necessary to execute it, and all persons at the command of either of said officers shall assist in such execution under a penalty for refusal, of not exceeding ten dollars. [Code 1881 § 2210; RRS § 6067.]

70.20.110 Expenses, payment of. The charges of securing such infected articles and of transporting and purifying them, shall be paid by the owners thereof at the price determined by the municipal officers. [Code 1881 § 2211; RRS § 6068.]

70.20.120 Compensation for services and buildings. When the officer impresses or takes up any house or other building or other necessities, or impresses any man as herein provided, the parties interested shall have just compensation therefor, to be paid by the town or city in which such persons or property were impressed. [Code 1881 § 2212; RRS § 6069.]

70.20.130 Courts may convene in other cities. When a malignant infectious disease prevails in any town or city wherein the supreme or judicial court is to be held, said courts may be adjourned and may be held in any town or city in said county, by proclamation made in such public manner as the courts judge best, as near their usual place of meeting as they think safety permits. [Code 1881 § 2213; RRS § 6070.]

70.20.150 Order of removal. If he was committed by order of a court or under a judicial process, the order for his removal, or a copy thereof attested by the municipal officers, shall be returned by them with the doings thereon, into the office of the clerk of the court from which such order or process was issued. No such removal shall be deemed an escape. [Code 1881 § 2215; RRS § 6072.]

70.20.160 City or town may select health committee—Health officer—Powers. A town or city may, at its annual meeting, choose or elect a health committee, of not less than three nor more than five, or one person to be a health officer who shall remove, at the expense of their town or city all filth found in any place therein, which, in their judgment endangers the lives or health of any inhabitant, and require the owner or occupant, when they think necessary, to remove or discontinue any drain or other source of filth. [Code 1881 § 2216; RRS § 6073.]

Town or city health officer, appointment: Chapter 70.05 RCW.

70.20.165 Municipal officers as health committee. If any town or city, at its annual election, omits to choose or elect such committee or officer, the municipal officers shall be a health committee and have all their powers and perform all their duties. [Code 1881 § 2217; RRS § 6074.]

Town or city health officer, appointment: Chapter 70.05 RCW.

70.20.170 Removal of filth on private property—Penalty. When any source of filth, or other cause of sickness is found on private property, the owners or occupant thereof shall, within twenty-four hours after notice from the said committee or officers, at his own expense, remove or discontinue it; and if he neglects or unreasonably delays to do so, he shall forfeit not exceeding fifty dollars; and said committee or officers shall cause said nuisance to be removed or discontinued, and all expenses shall be repaid to the town or city by such owner or occupant, or by the person who caused or permitted it. [Code 1881 § 2218; RRS § 6075.]

Nuisances, generally: Chapters 7.48 and 9.66 RCW.

70.20.180 Breaking quarantine. Whenever a house has been quarantined by the board of health in any city or towns in this state, it shall be unlawful for any person, without the permission of the health officer, to leave the said house. [1901 c 48 § 1; no RRS. FORMER PART OF SECTION: 1901 c 48 § 2 now codified as RCW 70.20.185.]

70.20.185 Breaking quarantine—Penalty. Any person violating the provisions of RCW 70.20.180, shall be deemed guilty of a misdemeanor and shall be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail for a period of thirty days, or both such fine and imprisonment. [1901 c 48 § 2; no RRS. Formerly RCW 70.20.180.]

Chapter 70.22
MOSQUITO CONTROL

Sections

70.22.010	Declaration of purpose.
70.22.020	Secretary of social and health services may make inspections, investigations, and determinations and provide for control.
70.22.030	Secretary to coordinate plans.
70.22.040	Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes.
70.22.050	Powers and duties of secretary of social and health services.
70.22.060	Governmental entities to cooperate with secretary.
70.22.900	Severability—1961 c 283.

70.22.010 Declaration of purpose. The purpose of this chapter is to establish a state-wide program for the control or elimination of mosquitoes as a health hazard. [1961 c 283 § 1.]

Weeds, rodents and pests: Title 17 RCW.

70.22.020 Secretary of social and health services may make inspections, investigations, and determinations and provide for control. The secretary of social and health services is hereby authorized and empowered to make or cause to be made such inspections, investigations, studies and determinations as he may from time to time deem advisable in order to ascertain the effect of mosquitoes as a health hazard, and, to the extent to which funds are available, to provide for the control or elimination thereof in any or all parts of the state. [1979 c 141 § 88; 1961 c 283 § 2.]

70.22.030 Secretary to coordinate plans. The secretary of social and health services shall coordinate plans for mosquito control work which may be projected by any county, city or town, municipal corporation, taxing district, state department or agency, federal government agency, or any person, group or organization, and arrange for cooperation between any such districts, departments, agencies, persons, groups or organizations. [1979 c 141 § 89; 1961 c 283 § 3.]

70.22.040 Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes. The secretary of social and health services is authorized and empowered to receive funds from any county, city or town, municipal corporation, taxing district, the federal government, or any person, group or organization to carry out the purpose of this chapter. In connection therewith the secretary is authorized and empowered to contract with any such county, city, or town, municipal corporation, taxing district, the federal government, person, group or organization with respect to the construction and maintenance of facilities and other work for the purpose of effecting mosquito control or elimination, and any such county, city or town, municipal corporation, or taxing district obligated to carry out the provisions of any such contract entered into with the secretary of social and health services is authorized, empowered and directed to appropriate, and if necessary, to levy taxes

for and pay over such funds as its contract with the secretary may from time to time require. [1979 c 141 § 90; 1961 c 283 § 4.]

70.22.050 Powers and duties of secretary of social and health services. To carry out the purpose of this chapter, the secretary of social and health services may

(2) abate as nuisances breeding places for mosquitoes as defined in RCW 17.28.170;

(3) acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for carrying out the purpose of this chapter;

(4) make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants;

(5) publish information or literature;

(6) do any and all other things necessary to carry out the purpose of this chapter: *Provided*, That no program shall be permitted nor any action taken in pursuance thereof which may be injurious to the life or health of game or fish. [1979 c 141 § 91; 1961 c 283 § 5.]

Reviser's note: Subdivision (1) was vetoed.

70.22.060 Governmental entities to cooperate with secretary. Each state department, agency, and political subdivision shall cooperate with the secretary of social and health services in carrying out the purposes of this chapter. [1979 c 141 § 92; 1961 c 283 § 6.]

70.22.900 Severability—1961 c 283. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 283 § 7.]

Chapter 70.24

CONTROL AND TREATMENT OF VENEREAL DISEASES

Sections

70.24.010	Venereal diseases designated.
70.24.020	Examination and treatment of suspected persons.
70.24.030	Treatment of infected prisoners.
70.24.040	Rules and regulations—Penalty.
70.24.050	Laboratory examinations.
70.24.060	Appeal to secretary—Findings conclusive.
70.24.070	Quarantine districts authorized.
70.24.080	Penalty.
70.24.090	Test of pregnant women for syphilis.
70.24.100	Syphilis laboratory tests.
70.24.110	Minors—Treatment, consent, liability for payment for care.
70.24.120	Venereal disease case investigators—Authority to perform venipuncture or skin puncture.

70.24.010 Venereal diseases designated. Syphilis, gonorrhea and chancroid hereinafter designated as venereal diseases are hereby declared to be contagious, infectious, communicable and dangerous to the public health. It shall be unlawful for anyone infected with these diseases or any of them to expose another person to infection. [1919 c 114 § 1; RRS § 6100.]

70.24.020 Examination and treatment of suspected persons. State, county and municipal health officers, or their authorized deputies, who are licensed physicians, within their respective jurisdictions are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examination of persons reasonably suspected of being infected with venereal disease of a communicable nature, and to require persons infected with venereal disease of such communicable nature to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense until cured, and also, when in the judgment of the secretary of social and health services, it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease of such communicable nature. It shall be the duty of all local and state health officers to investigate sources of infection of venereal diseases, to cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution: *Provided*, That any person suspected as herein set out may have present at the time of taking the blood sample or smear a physician of his or her choosing, who may satisfy himself that the blood or smear taken is that of the suspected person, and that the same shall be forwarded to the proper state authorities for laboratory tests, and: *Provided, further*, That the suspected person shall be informed by the health officer of his or her rights under RCW 70.24.010 through 70.24.080. [1979 c 141 § 93; 1919 c 114 § 2; RRS § 6101.]

Construction—1919 c 114: "The provisions of this act shall be cumulative with the existing laws and regulations and nothing herein shall abridge or limit the powers of health authorities as construed by the supreme court of the state of Washington; except as herein otherwise provided." [1919 c 114 § 9.]

70.24.030 Treatment of infected prisoners. Any person who shall be confined or imprisoned in any state, county, or city prison in the state and who may be reasonably suspected by the health officer of being infected with venereal disease shall be examined for and, if infected, treated for venereal diseases by the health authorities or their deputies who are licensed physicians. The prison authorities of any state, county, or city prison are directed to make available to the health authorities such portion of any state, county, or city prison as may be necessary for a clinic or hospital wherein all persons who may be confined or imprisoned in any such prison and who are infected with venereal disease, and all such persons who are suffering with venereal disease at the time of the expiration of their terms of imprisonment, and, in case no other suitable place for isolation or quarantine is available, such other persons as may be isolated or quarantined under the provisions of RCW 70.24.020, shall be isolated and treated at public expense until cured, or, in lieu of such isolation any of such persons may, in the discretion of the board of health, be required to report for treatment to a licensed physician, or submit to treatment provided at public expense as provided in RCW 70.24.020. Nothing herein contained shall be construed to interfere with the service of any

sentence imposed by a court as a punishment for the commission of crime. [1919 c 114 § 3; RRS § 6102.]

70.24.040 Rules and regulations—Penalty. The state board of health is hereby empowered and directed to make such rules and regulations as shall in its judgment be necessary for the carrying out of the provisions of *this act, including rules and regulations providing for the control and treatment of persons isolated or quarantined under the provisions of RCW 70.24.020, and such other rules and regulations, not in conflict with provisions of *this act, concerning the control of venereal diseases, and concerning the care, treatment and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by *this act, and shall have the force and effect of law: *Provided*, That such regulations shall prescribe reasonable safeguards against the disclosure of the names of any such infected persons, who faithfully comply with the provisions of *this act and the lawful regulations of the state board of health, except to officers and physicians charged with the enforcement of this act and such rules and regulations and any violation of such safeguarding regulations, shall be a gross misdemeanor. [1919 c 114 § 4; RRS § 6103.]

***Reviser's note:** "[T]his act" first appears in 1919 c 114 and is codified as RCW 70.24.010 through 70.24.080.

Sunset Act application: See note following RCW 43.20.030.

70.24.050 Laboratory examinations. Diagnosis in every instance must be confirmed by laboratory examinations in a laboratory approved by the state board of health, before any person shall be isolated or committed to quarantine and before any person committed to quarantine shall be discharged therefrom. [1919 c 114 § 6; RRS § 6105.]

70.24.060 Appeal to secretary—Findings conclusive. Any person committed to quarantine under the provisions of RCW 70.24.010 through 70.24.080, feeling aggrieved at the finding of any health officer that he or she is infected, or at the finding of any quarantine officer that he or she has not been cured of infection, shall have the right of appeal from such finding to the secretary of social and health services; and it shall be the duty of every health officer making an examination, and of every quarantine officer, to notify all persons examined or quarantined of their rights in that regard, and to supply them with the forms necessary for that purpose, upon which to make such appeals, to be provided by the secretary of social and health services, and to immediately transmit any such appeals by mail to the secretary of social and health services; and the secretary of social and health services shall, within five days after receiving any such appeal, either in person or by regular or special physician deputy appointed for that purpose, and skilled in the diagnosis of contagious venereal diseases, examine or cause to be examined the person taking the appeal, and the finding and conclusion of the secretary of social

and health services or his deputy so making such examination shall be final and conclusive. [1979 c 141 § 94; 1919 c 114 § 7; RRS § 6106.]

70.24.070 Quarantine districts authorized. For the purpose of carrying out the provisions of *this act the state board of health shall have the power and authority, from time to time, to divide the state into such number of quarantine districts consisting of one or more counties or parts of counties or municipalities as it shall deem expedient, and to establish at such place or places as it shall deem necessary quarantine stations and clinics for the detention and treatment of persons found to be infected and to establish any such quarantine station and clinic in connection with any county or city jail, or in any hospital or other public or private institution having, or which may be provided with, such necessary detention, segregation, isolation, clinic and hospital facilities as may be required and prescribed by the board, and to enter into arrangements for the conduct of such quarantine stations and clinics with the public officials or persons, associations, or corporations in charge of or maintaining and operating such institutions. [1919 c 114 § 8; RRS § 6107.]

*Reviser's note: "[T]his act", see note following RCW 70.24.040.

Sunset Act application: See note following RCW 43.20.030.

70.24.080 Penalty. Any person who shall violate any of the provisions of *this act or any lawful rule or regulation made by the state board of health pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county or municipal health officer, pursuant to the authority granted in *this act, shall be deemed guilty of a gross misdemeanor. [1919 c 114 § 5; RRS § 6104.]

*Reviser's note: "[T]his act", see note following RCW 70.24.040.

70.24.090 Test of pregnant women for syphilis. Every physician attending a pregnant woman in the state of Washington during gestation shall, in the case of each woman so attended, take or cause to be taken a sample of blood of such woman at the time of first examination, and submit such sample to an approved laboratory for a standard serological test for syphilis. If the pregnant woman first presents herself for examination after the fifth month of gestation the physician or other attendant shall in addition to the above, advise and urge the patient to secure a medical examination and blood test before the fifth month of any subsequent pregnancies. [1939 c 165 § 1; RRS § 6002-1.]

70.24.100 Syphilis laboratory tests. A standard serological test shall be a laboratory test for syphilis approved by the secretary of social and health services and shall be performed either by a laboratory approved by the secretary of social and health services for the performance of the particular serological test used or by the state department of social and health services, on request of the physician free of charge. [1979 c 141 § 95; 1939 c 165 § 2; RRS § 6002-2.]

70.24.110 Minors—Treatment, consent, liability for payment for care. A minor fourteen years of age or older who may have come in contact with any venereal disease or suspected venereal disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section. [1969 ex.s. c 164 § 1.]

70.24.120 Venereal disease case investigators—Authority to perform venipuncture or skin puncture. Venereal disease case investigators, upon specific authorization from a doctor, are hereby authorized to perform venipuncture or skin puncture on a person for the sole purpose of withdrawing blood for use in venereal disease tests.

The term "venereal disease case investigator" shall mean only those persons who:

- (1) Are employed by public health authorities; and
- (2) Have been trained by a doctor in proper procedures to be employed when withdrawing blood in accordance with training requirements established by the department of social and health services; and
- (3) Possess a statement signed by the instructing doctor that the training required by subsection (2) of this section has been successfully completed.

The term "doctor" means any person licensed under the provisions of chapters 18.57 or 18.71 RCW. [1977 c 59 § 1.]

Chapter 70.28 CONTROL OF TUBERCULOSIS

Sections	
70.28.010	Physicians required to report cases.
70.28.020	Record of reports.
70.28.031	Powers and duties of health officers.
70.28.033	Isolation or examination order of health officer— Violation—Penalty.
70.28.035	Isolation or examination order of health officer— Refusal to obey—Application for superior court order.
70.28.037	Superior court order for confinement of individuals having active tuberculosis.
70.28.040	Penalty.
70.28.050	Enforcement of regulations.

70.28.010 Physicians required to report cases. All practicing physicians in the state are hereby required to report to the local boards of health in writing, the name, age, sex, occupation and residence of every person having tuberculosis who has been attended by, or who has come under the observation of such physician within five days thereof. [1967 c 54 § 1; 1899 c 71 § 1; RRS § 6109.]

Severability—1967 c 54: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 54 § 20.]

This applies to RCW 70.28.031–70.28.037, and 70.30.071; the 1967 amendments to RCW 70.28.010, 70.28.020, 70.28.050, 70.30.010, 70.30.040, 70.30.050, 70.30.060, 70.30.080, 70.30.100, 70.32.040, 70.32.050, 70.32.060, 70.32.080; and to the repeal of RCW 70.28.030, 70.30.070, 70.30.090, 70.30.120, 70.30.150, 70.32.011, 70.32.022–70.32.025, 70.32.070, 70.34.010–70.34.190, and 70.36.010–70.36.060.

70.28.020 Record of reports. All local boards of health in this state are hereby required to receive and keep a permanent record of the reports required by RCW 70.28.010 to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper inspection of other local and state boards of health alone, and such records shall not be published nor made public. [1967 c 54 § 2; 1899 c 71 § 2; RRS § 6110.]

70.28.031 Powers and duties of health officers. Each health officer is hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of tuberculosis in the infectious stages within his jurisdiction and to ascertain the sources of such infections. In carrying out such investigations, each health officer is hereby invested with full powers of inspection, examination and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations and is hereby directed:

(a) To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and to isolate or isolate and quarantine such persons, whenever deemed necessary for the protection of the public health.

(b) To make such examinations as deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations.

(c) Follow local rules and regulations regarding examinations, quarantine, or isolation, and all rules, regulations, and orders of the state board and of the department in carrying out such examination, quarantine or isolation.

(d) Whenever the health officer shall determine on reasonable grounds that an examination of any person is necessary for the preservation and protection of the public health, he shall make an examination order in writing, setting forth the name of the person to be examined, the time and place of the examination, and such other terms and conditions as may be necessary to protect the public health. Nothing contained in this subdivision shall be construed to prevent any person whom the health officer determines should have an examination for infectious tuberculosis from having such an examination made by a physician of his own choice who is licensed to practice osteopathy and surgery under chapter 18.57 RCW or medicine and surgery under chapter 18.71 RCW under such terms and conditions as the health officer shall determine on reasonable grounds to be necessary to protect the public health.

(e) Whenever the health officer shall determine that quarantine or isolation in a particular case is necessary

for the preservation and protection of the public health, he shall make an isolation or quarantine order in writing, setting forth the name of the person to be isolated, the period of time during which the order shall remain effective, the place of isolation or quarantine, and such other terms and conditions as may be necessary to protect the public health.

(f) Upon the making of an examination, isolation, or quarantine order as provided in this section, a copy of such order shall be served upon the person named in such order.

(g) Upon the receipt of information that any examination, quarantine, or isolation order, made and served as herein provided, has been violated, the health officer shall advise the prosecuting attorney of the county in which such violation has occurred, in writing, and shall submit to such prosecuting attorney the information in his possession relating to the subject matter of such examination, isolation, or quarantine order, and of such violation or violations thereof.

(h) Any and all orders authorized under this section shall be made by the health officer or his tuberculosis control officer. [1967 c 54 § 4.]

70.28.033 Isolation or examination order of health officer—Violation—Penalty. Inasmuch as the order provided for by RCW 70.28.031 is for the protection of the public health, any person who, after service upon him of an order of a health officer directing his isolation or examination as provided for in RCW 70.28.031, violates or fails to comply with the same or any provision thereof, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any and all other penalties which may be imposed by law upon such conviction, may be ordered by the court confined until such order of such health officer shall have been fully complied with or terminated by such health officer, but not exceeding six months from the date of passing judgment upon such conviction: *Provided*, That the court, upon suitable assurances that such order of such health officer will be complied with, may place any person convicted of a violation of such order of such health officer upon probation for a period not to exceed two years, upon condition that the said order of said health officer be fully complied with: *And provided further*, That upon any subsequent violation of such order of such health officer, such probation shall be terminated and confinement as herein provided ordered by the court. [1967 c 54 § 5.]

70.28.035 Isolation or examination order of health officer—Refusal to obey—Application for superior court order. In addition to the proceedings set forth in RCW 70.28.031, where a local health officer has reasonable cause to believe that an individual has tuberculosis as defined in the rules and regulations of the state board of health, and the individual refuses to obey the order of the local health officer to appear for an initial examination or a follow-up examination, the health officer may apply to the superior court for an order requiring the individual to comply with the order of the local health officer. [1967 c 54 § 6.]

Sunset Act application: See note following RCW 43.20.030.

70.28.037 Superior court order for confinement of individuals having active tuberculosis. Where it has been determined after an examination as prescribed above, that an individual has active tuberculosis, and he resides in a county in which no tuberculosis facility is located, upon application to the superior court by the local health officer, the superior court may order the sheriff to transport said individual to a designated tuberculosis facility for isolation, treatment and care until such time as the medical director of the hospital determines that his condition is such that it is safe for him to be discharged from the facility. [1967 c 54 § 7.]

70.28.040 Penalty. Any practicing physician who shall wilfully fail to comply with the provisions of RCW 70.28.010 shall be guilty of a misdemeanor, and on conviction thereof may be fined for the first offense not exceeding five dollars, and for any subsequent offense not exceeding one hundred dollars. [1899 c 71 § 4; RRS § 6112.]

70.28.050 Enforcement of regulations. It is hereby made the duty of every person having tuberculosis and of every one attending such person, and of the authorities of public and private institutions, hospitals or dispensaries, to observe and enforce the sanitary rules and regulations prescribed from time to time by the local boards of health and by the state board of health for the prevention of the spread of pulmonary tuberculosis. [1967 c 54 § 3; 1899 c 71 § 5; RRS § 6113.]

Chapter 70.30

TUBERCULOSIS HOSPITALS AND FACILITIES

Sections

70.30.061	Admissions to facility.
70.30.072	Payment for care of patients.
70.30.081	Annual inspections.

County hospitals: Chapter 36.62 RCW.

Hospital's lien: Chapter 60.44 RCW.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

70.30.061 Admissions to facility. Any person residing in the state and needing treatment for tuberculosis, may apply in person to the local health officer or to any licensed physician for examination and if such physician has reasonable cause to believe that said person is suffering from tuberculosis in any form he may apply to the local health officer or tuberculosis hospital director for admission of said person to an appropriate facility for the care and treatment of tuberculosis. [1973 1st ex.s. c 213 § 1; 1972 ex.s. c 143 § 2.]

70.30.072 Payment for care of patients. Upon admission of a patient to a tuberculosis hospital, the secretary or the hospital director, as appropriate, or their designees, shall determine the patient's ability to pay for his care in whole or in part. If the patient or said relatives are not financially able to contribute in whole or in

part to his care in the facility, said patient shall be admitted free of charge, or upon the payment of a portion of the charges. [1972 ex.s. c 143 § 3.]

70.30.081 Annual inspections. All hospitals established or maintained for the treatment of persons suffering from tuberculosis shall be subject to annual inspection, or more frequently if required by federal law, by agents of the department of social and health services, and the medical director shall admit such agents into every part of the facility and its buildings, and give them access on demand to all records, reports, books, papers, and accounts pertaining to the facility. [1972 ex.s. c 143 § 4.]

Chapter 70.32

COUNTY AND STATE TUBERCULOSIS FUNDS

Sections

70.32.010	Expenditures for tuberculosis control directed— Standards.
70.32.050	Responsibility of local health officer.
70.32.060	Medical reports on patients.

Definitions applying to this chapter: RCW 70.33.010.

State administered tuberculosis hospital facilities: Chapter 70.33 RCW.

70.32.010 Expenditures for tuberculosis control directed—Standards. Tuberculosis is a communicable disease and tuberculosis control, case finding, prevention and follow up of known cases of tuberculosis represents the basic step in the conquest of this major health problem. In order to carry on such work effectively in accordance with the standards set by the secretary pursuant to RCW 70.33.020, the legislative authority of each county shall budget a sum to be used for the control of tuberculosis, including case finding, prevention and follow up of known cases of tuberculosis. [1975 1st ex.s. c 291 § 3; 1973 1st ex.s. c 195 § 79; 1971 ex.s. c 277 § 21; 1970 ex.s. c 47 § 7; 1967 ex.s. c 110 § 11; 1959 c 117 § 1; 1945 c 66 § 1; 1943 c 162 § 1; Rem. Supp. 1945 § 6113-1.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

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

County budget for tuberculosis facilities—State services: RCW 70.33.040.

County treasurer: Chapter 36.29 RCW.

70.32.050 Responsibility of local health officer. All arrangements for hospital care, tuberculosis case finding and post hospital public health follow-up of known cases of tuberculosis of any county enumerated in RCW 70.33.040 shall be the responsibility of the local health officer and shall be carried out pursuant to rules and regulations adopted by the state board of health. [1971 ex.s. c 277 § 22; 1967 c 54 § 16; 1945 c 66 § 5; 1943 c 162 § 5; Rem. Supp. 1945 § 6113-5.]

Definitions: RCW 70.33.010.

70.32.060 Medical reports on patients. Medical reports on the condition of all patients shall be submitted to the health department of any county of the patient's residence by the hospital medical director at such times, on such forms and in accordance with such procedure as may be prescribed by the secretary. [1971 ex.s. c 277 § 23; 1967 c 54 § 17; 1945 c 66 § 6; 1943 c 162 § 6; Rem. Supp. 1945 § 6113-6.]

Definitions: RCW 70.33.010.

Chapter 70.33

STATE ADMINISTERED TUBERCULOSIS HOSPITAL FACILITIES

Sections

70.33.010	Definitions.
70.33.020	Secretary's administrative responsibility—Scope.
70.33.030	Medical director—Qualifications—Powers and duties.
70.33.040	County budget for tuberculosis facilities—State services.
70.33.050	County responsibility for costs of care terminates, when.
70.33.060	Transfer of assets and liabilities to department, when.

70.33.010 Definitions. The following words and phrases shall have the designated meanings in this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and *70.32.090 unless the context clearly indicated otherwise:

(1) "Department" means the department of social and health services;

(2) "Secretary" means the secretary of the department of social and health services or his designee;

(3) "Tuberculosis hospital" and "tuberculosis hospital facility" refer to hospitals for the care of persons suffering from tuberculosis;

(4) "Tuberculosis control" refers to the procedures administered in the counties for the control and prevention of tuberculosis, but does not include hospitalization. [1971 ex.s. c 277 § 15.]

*Reviser's note: RCW 70.32.090 was repealed by 1975 1st ex.s. c 291 § 24.

70.33.020 Secretary's administrative responsibility—Scope. From and after August 9, 1971, the secretary shall have responsibility for establishing standards for the control, prevention and treatment of tuberculosis and shall have administrative responsibility and control for all tuberculosis hospital facilities in the state operated pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and *70.32.090 and for providing, either directly or through agreement, contract or purchase, hospital, nursing home and other appropriate facilities and services including laboratory services for persons who are, or may be suffering from tuberculosis except as otherwise provided by RCW 70.30.061, 70.33.020, 70.33.030, 70.33.040 and *70.35.040.

Pursuant to that responsibility, the secretary shall have the following powers and duties:

(1) To develop and enter into such agreements, contracts or purchase arrangements with counties and public and private agencies or institutions to provide for

hospitalization, nursing home or other appropriate facilities and services for persons who are or may be suffering from tuberculosis, or to provide for and maintain any tuberculosis hospital facility which the secretary determines is necessary to meet the needs of the state, to determine where such hospitals shall be located and to adequately staff such hospitals to meet patient care needs;

(2) To appoint a medical director for each tuberculosis hospital facility operated pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and *70.32.090;

(3) Adopt such rules and regulations as are necessary to assure effective patient care and treatment, and to provide for the general administration of tuberculosis hospital facilities operated pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and *70.32.090. [1973 1st ex.s. c 213 § 2; 1971 ex.s. c 277 § 16.]

*Reviser's note: RCW 70.32.090 and 70.35.040 were repealed by 1975 1st ex.s. c 291 § 24.

70.33.030 Medical director—Qualifications—Powers and duties. The medical director of any tuberculosis hospital facility operated pursuant to this chapter and RCW 70.32.010, 70.32.050, 70.32.060 and *70.32.090 and RCW 70.30.061, 70.33.020, 70.33.030, 70.33.040 and *70.35.040 shall be a qualified and licensed practitioner of medicine and shall have the following powers and duties:

(1) To provide for the administration of the hospital according to the rules and regulations adopted by the department;

(2) To adopt and publish such rules and regulations governing the administration of the hospital as are deemed necessary: *Provided*, That such rules and regulations are not in conflict with those adopted by the department and have the written approval of the secretary. [1973 1st ex.s. c 213 § 3; 1971 ex.s. c 277 § 17.]

*Reviser's note: RCW 70.32.090 and 70.35.040 were repealed by 1975 1st ex.s. c 291 § 24.

70.33.040 County budget for tuberculosis facilities—State services. In order to maintain adequate tuberculosis hospital facilities and to provide for adequate hospitalization, nursing home and other appropriate facilities and services for the residents of the state of Washington who are or may be suffering from tuberculosis and to assure their proper care, the standards set by the secretary pursuant to RCW 70.33.020 and 70.32.050 and 70.32.060, the legislative authority of each county shall budget annually a sum to provide such services in the county.

If such counties desire to receive state services, they may elect to utilize funds pursuant to this section for the purpose of contracting with the state upon agreement by the state for the cost of providing tuberculosis hospitalization and/or outpatient treatment including laboratory services, or such funds may be retained by the county for operating its own services for the prevention and treatment of tuberculosis or any other community health purposes authorized by law. None of such counties shall be required to make any payments to the state or any other agency from these funds except upon the express

consent of the county legislative authority: *Provided*, That if the counties do not comply with the promulgated standards of the department the secretary shall take action to provide such required services and to charge the affected county directly for the provision of these services by the state. [1975 1st ex.s. c 291 § 4. Prior: 1973 1st ex.s. c 213 § 4; 1973 1st ex.s. c 195 § 81; 1971 ex.s. c 277 § 18.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Expenditures for tuberculosis control directed—Standards: RCW 70.32.010.

70.33.050 County responsibility for costs of care terminates, when. During the period from August 9, 1971 to January 1, 1972 each of the respective counties enumerated in RCW 70.33.040 will be responsible for the cost of care for hospitalization of patients with tuberculosis from the respective counties, when such patients are unable to pay all or any of the hospitalization costs: *Provided*, That no county enumerated in RCW 70.33.040 shall be liable for payment for such cost of care beyond the amount budgeted and collected in each such county for tuberculosis hospitalization and control as a result of revenue from previous levied tuberculosis taxes or payments in lieu of taxes. [1971 ex.s. c 277 § 19.]

70.33.060 Transfer of assets and liabilities to department, when. From August 9, 1971 in any county enumerated in RCW 70.33.040 currently maintaining a tuberculosis hospital facility, the department will assume all assets and liabilities relating to such hospitals and the counties and the department are authorized and directed to take all steps required by law to effect such transfer. [1971 ex.s. c 277 § 20.]

Chapter 70.37

HEALTH CARE FACILITIES

Sections

70.37.010	Declaration of public policies—Purpose.
70.37.020	Definitions.
70.37.030	Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Travel expenses.
70.37.040	Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds.
70.37.050	Requests for financing—Project plan or system—Bond issue, special fund authorized.
70.37.060	Bond issues—Terms—Payment—Legal investment, etc.
70.37.070	Bond issues—Special trust fund—Payments—Status—Administration of fund.
70.37.080	Bond issues—Disposition of proceeds—Special fund.
70.37.090	Payment of authority for expenses incurred in investigating and financing projects.
70.37.100	Powers of authority.
70.37.110	Advancements and contributions by political subdivisions.
70.37.900	Severability—1974 ex.s. c 147.

70.37.010 Declaration of public policies—Purpose. The good health of the people of our state is a most important public concern. The state has a direct interest in seeing to it that health care facilities adequate for good

public health are established and maintained in sufficient numbers and in proper locations. The rising costs of care of the infirm constitute a grave challenge not only to health care providers but to our state and the people of our state who will seek such care. It is hereby declared to be the public policy of the state of Washington to assist and encourage the building, providing and utilization of modern, well equipped and reasonably priced health care facilities, and the improvement, expansion and modernization of health care facilities in a manner that will minimize the capital costs of construction, financing and use thereof and thereby the costs to the public of the use of such facilities, and to contribute to improving the quality of health care available to our citizens. In order to accomplish these and related purposes this chapter is adopted and shall be liberally construed to carry out its purposes and objects. [1974 ex.s. c 147 § 1.]

70.37.020 Definitions. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent and the singular of any term shall encompass the plural and the plural the singular unless the context indicates otherwise:

(1) "Authority" means the Washington health care facilities authority created by RCW 70.37.030 or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" mean bonds, notes or other evidences of indebtedness of the authority issued pursuant hereto.

(3) "Health care facility" means any land, structure, system, machinery, equipment or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services, excluding, however, any facility which is maintained by a participant primarily for rental or lease to self-employed health care professionals or as an independent nursing home or other facility primarily offering domiciliary care.

(4) "Participant" means any city, county or other municipal corporation or agency or political subdivision of the state or any corporation, hospital, or health maintenance organization authorized by law to operate non-profit health care facilities.

(5) "Project" means a specific health care facility or any combination of health care facilities, constructed, purchased, acquired, leased, used, owned or operated by a participant, and alterations, additions to, renovations, enlargements, betterments and reconstructions thereof. [1974 ex.s. c 147 § 2.]

70.37.030 Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Travel expenses. There is

hereby established a public body corporate and politic, with perpetual corporate succession, to be known as the Washington health care facilities authority. The authority shall constitute a political subdivision of the state established as an instrumentality exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010, as now or hereafter amended. The authority shall consist of the governor who shall serve as chairman, the lieutenant governor, the insurance commissioner, the chairman of the Washington state hospital commission, and one member of the public who shall be appointed by the governor, subject to confirmation by the senate, for terms of four years each on the basis of their interest or expertise in health care delivery, the first appointees to be appointed for terms expiring on the second and fourth March 1st, respectively, following enactment of this chapter. In the event that any of the offices referred to shall be abolished the resulting vacancy on the authority shall be filled by the officer who shall succeed substantially to the powers and duties thereof. The members of the authority shall serve without compensation, but shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses incurred in the discharge of their duties under this chapter, subject to the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. A majority shall constitute a quorum. [1975-'76 2nd ex.s. c 34 § 157; 1974 ex.s. c 147 § 3.]

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

70.37.040 Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds. (1) The authority is hereby empowered to issue bonds for the construction, purchase, acquisition, rental, leasing or use by participants of projects for which bonds to provide funds therefor have been approved by the authority. Such bonds shall be issued in the name of the authority. They shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. They shall contain a recital on their face that their payment and the payment of interest thereon shall be a valid claim only as against the special fund relating thereto derived by the authority in whole or in part from the revenues received by the authority from the operation by the participant of the health care facilities for which the bonds are issued but that they shall constitute a prior charge over all other charges or claims whatever against such special fund. The lien of any such pledge on such revenues shall attach thereto immediately on their receipt by the authority and shall be valid and binding as against parties having claims of any kind in tort, contract or otherwise against the participant, without recordation thereof and whether or not they have notice thereof. For inclusion in such special funds and for other uses in or for such projects of participants the authority is empowered to accept and receive funds, grants, gifts, pledges, guarantees, mortgages, trust deeds and other security instruments,

and property from the federal government or the state of Washington or other public body, entity or agency and from any public or private institution, association, corporation or organization, including participants, except that it shall not accept or receive from the state or any taxing agency any money derived from taxes save money to be devoted to the purposes of a project of the state or taxing agency.

(2) For the purposes outlined in subsection (1) of this section the authority is empowered to provide for the issuance of its special fund bonds and other limited obligation security instruments subordinate to the first and prior lien bonds, if any, relating to a project or projects of a participant and to create special funds relating thereto against which such subordinate securities shall be liens, but the authority shall not have power to incur general obligations with respect thereto.

(3) The authority may also issue special fund bonds to redeem or to fund or refund outstanding bonds or any part thereof at maturity, or before maturity if subject to prior redemption, with the right in the authority to include various series and issues of such outstanding special fund bonds in a single issue of funding or refunding special fund bonds and to pay any redemption premiums out of the proceeds thereto. Such funding or refunding bonds shall be limited special fund bonds issued in accordance with the provisions of this chapter, including this section and shall not be general obligations of the authority.

(4) Such special fund bonds of either first lien or subordinate lien nature may also be issued by the authority, the proceeds of which may be used to refund already existing mortgages or other obligations on health care facilities already constructed and operating incurred by a participant in the construction, purchase or acquisition thereof.

(5) The authority may also lease to participants, lease to them with option to purchase, or sell to them, facilities which it has acquired by construction, purchase, devise, gift, or leasing: *Provided*, That the terms thereof shall at least fully reimburse the authority for its costs with respect to such facilities, including costs of financing, and provide fully for the debt service on any bonds issued by the authority to finance acquisition by it of the facilities. To pay the cost of acquiring or improving such facilities or to refund any bonds issued for such purpose, the authority may issue its revenue bonds secured solely by revenues derived from the sale or lease of the facility, but which may additionally be secured by mortgage, lease, pledge or assignment, trust agreement or other security device. Such bonds and such security devices shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. Such health care facilities may be acquired, constructed, reconstructed, and improved and may be leased, sold or otherwise disposed of in the manner determined by the authority in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of the state, or any agency

thereof, is not applicable to any action so taken by the authority. [1974 ex.s. c 147 § 4.]

70.37.050 Requests for financing—Project plan or system—Bond issue, special fund authorized. The authority shall establish rules concerning its exercise of the powers authorized by this chapter. The authority shall receive from applicants requests for the providing of bonds for financing of health care facilities and shall investigate and determine the need and the feasibility of providing such bonds. In cooperation with the participant the authority shall work out and specify a project plan or system and the agreements and contracts to be entered into in order to carry out the purposes and policies of this chapter including contracts with respect to construction, financing, maintenance, operation, or management. Whenever the authority deems it necessary or advisable for the benefit of the public health to provide financing for a health care facility, it shall adopt a system and plan therefor and shall declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for the expenses incurred in the financing as well as in the construction or purchase or other acquisition or in connection with the rental or other payment for the use thereof, interest during construction, reserve funds and any funds necessary for initial start-up costs, and shall issue and sell its bonds for the purposes of the proposed plan or system: *Provided*, That if a certificate of need is required for the proposed project no such plan and system shall be adopted until such certificate has been issued pursuant to chapter 70.38 RCW by the secretary of the department of social and health services. The authority shall have power as a part of such system or plan to create a special fund or funds for the purpose of defraying the cost of such project and for other projects of the same participant subsequently or at the same time approved by it and for their maintenance, improvement, reconstruction, remodeling and rehabilitation, into which special fund or funds it shall obligate and bind the participant to set aside and pay from the gross revenues of the project or from other sources an amount sufficient to pay the principal and interest of the bonds being issued, reserves and other requirements of the special fund and to issue and sell bonds payable as to both principal and interest out of such fund or funds relating to the project or projects of such participant.

Such bonds shall be executed in such manner, bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, or both, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as the authority shall determine. [1974 ex.s. c 147 § 5.]

70.37.060 Bond issues—Terms—Payment—Legal investment, etc. The bonds of the authority shall be subject to such terms, conditions and covenants and protective provisions as shall be found necessary or desirable by the authority, which may include but shall not

be limited to provisions for the establishment and maintenance by the participant of rates for health services of the project, fees and other charges of every kind and nature sufficient in amount and adequate, over and above costs of operation and maintenance and all other costs other than costs and expenses of capital, associated with the project, to pay the principal of and interest on the bonds payable out of the special fund or funds of the project, to set aside and maintain reserves as determined by the authority to secure the payment of such principal and interest, to set aside and maintain reserves for repairs and replacement, to maintain coverage which may be agreed upon over and above the requirements of payment of principal and interest, and for other needs found by the authority to be required for the security of the bonds. When issuing bonds the authority may provide for the future issuance of additional bonds on a parity with outstanding bonds, and the terms and conditions of their issuance.

All bonds issued under the authority of this chapter shall constitute legal investments for trustees and other fiduciaries and for savings and loan associations, banks, and insurance companies doing business in this state. All such bonds and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the negotiable instruments law of this state. [1974 ex.s. c 147 § 6.]

70.37.070 Bond issues—Special trust fund—Payments—Status—Administration of fund. All revenues received by the authority from a participant derived from a particular project of such participant to be applied on principal and interest of bonds or for other bond requirements such as reserves and all other funds for the bond requirements of a particular project received from contributions or grants or in any other form shall be deposited by the authority in qualified public depositories to the credit of a special trust fund to be designated as the authority special bond fund for the particular project or projects producing such revenue or to which the contribution or grant relates. Such fund shall not be or constitute funds of the state of Washington but at all times shall be kept segregated and set apart from other funds. From such funds, the authority shall make payment of principal and interest of the bonds of the particular project or projects; and the authority may set up subaccounts in the bond fund for reserve accounts for payment of principal and interest, for repairs and replacement and for other special requirements of the bonds of the project or projects as determined by the authority. In lieu of itself receiving and handling these moneys as here outlined the authority may appoint trustees, depositories and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the bondholders. [1974 ex.s. c 147 § 7.]

70.37.080 Bond issues—Disposition of proceeds—Special fund. Proceeds from the sale of all bonds of a project issued under the provisions of this chapter received by the authority shall be deposited

forthwith by the authority in qualified public depositories in a special fund for the particular project for which the bonds were issued and sold, which money shall not be funds of the state of Washington. Such fund shall at all times be segregated and set apart from all other funds and in trust for the purposes of purchase, construction, acquisition, leasing, or use of a project or projects, and for other special needs of the project declared by the authority, including the manner of disposition of any money not finally needed in the construction, purchase, or other acquisition. Money other than bond sale proceeds received by the authority for these same purposes, such as contributions from a participant or a grant from the federal government may be deposited in the same project fund. Proceeds received from the sale of the bonds may also be used to defray the expenses of the authority in connection with and incidental to the issuance and sale of bonds for the project, as well as expenses for studies, surveys, estimates, inspections and examinations of or relating to the particular project, and other costs advanced therefor by the participant or by the authority. In lieu of itself receiving and handling these moneys in the manner here outlined the authority may appoint trustees, depositories and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the participants and of bondholders. [1974 ex.s. c 147 § 8.]

70.37.090 Payment of authority for expenses incurred in investigating and financing projects. The authority shall have power to require persons applying for its assistance in connection with the investigation and financing of projects to pay fees and charges to provide the authority with funds for investigation, financial feasibility studies, expenses of issuance and sale of bonds and other charges for services provided by the authority in connection with such projects. All other expenses of the authority including compensation of its employees and consultants, expenses of administration and conduct of its work and business and other expenses shall be paid out of such fees and charges, out of contributions and grants to it, out of the proceeds of bonds issued for projects of participants or out of revenues of such projects; none by the state of Washington. The authority shall have power to establish special funds into which such money shall be received and out of which it may be disbursed by the persons and with the procedure and in the manner established by the authority. [1974 ex.s. c 147 § 9.]

70.37.100 Powers of authority. The authority may make contracts, employ or engage engineers, architects, attorneys, and other technical or professional assistants, and such other personnel as are necessary. It may enter into contracts with the United States, accept gifts for its purposes, and exercise any other power reasonably required to implement the principal powers granted in this chapter. It shall have no power to levy any taxes of any kind or nature and no power to incur obligations on behalf of the state of Washington. [1974 ex.s. c 147 § 10.]

70.37.110 Advancements and contributions by political subdivisions. Any city, county or other political subdivision of this state and any public health care facility is hereby authorized to advance or contribute to the authority real property, money, and other personal property of any kind towards the expense of preliminary surveys and studies and other preliminary expenses of projects which they are by other statutes of this state authorized to own or operate which are a part of a plan or system which has been submitted by them and is under consideration by the authority for assistance under the provisions of this chapter. [1974 ex.s. c 147 § 11.]

70.37.900 Severability—1974 ex.s. c 147. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 147 § 12.]

Chapter 70.38

HEALTH PLANNING AND RESOURCES DEVELOPMENT

(Formerly: Comprehensive health planning)

Sections	
70.38.015	Declaration of public policy.
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70.38.920	Short title.

Reviser's note: Former sections of this chapter, RCW 70.38.020, 70.38.110, 70.38.120, 70.38.130, 70.38.140, 70.38.150, 70.38.160, 70.38.170, 70.38.180, 70.38.190, and 70.38.210 were repealed by 1979 1st ex.s. c 161 § 21, effective January 1, 1980. For text of these sections, in effect until that date, see chapter 70.38 RCW in the 1976 edition of the Revised Code of Washington.

70.38.015 Declaration of public policy. In consideration of the findings made and national health priorities declared by the congress in the National Health Planning and Resources Development Act of 1974, Public Law 93-641, it is declared to be the public policy of this state:

(1) That planning for promoting, maintaining, and assuring a high level of health for all citizens of the state, and for the provision of health services, health manpower, health facilities, and other resources is essential to the health, safety, and welfare of the people of

the state. Such planning is necessary on both a state-wide and regional basis and must maintain responsiveness to changing health and social needs and conditions. The marshaling of all health resources to assure the quality and availability of health services to every person must be the goal of such planning, which must likewise assure optimum efficiency, effectiveness, equity, coordination, and economy in development and implementation to reach that goal;

(2) That the development and offering of new institutional health services should be accomplished in a manner which is orderly, timely, economical, and consistent with the effective development of necessary and adequate means of providing quality health care for persons to be served by such facilities without unnecessary duplication or fragmentation of such facilities;

(3) That the development of health resources, including the construction, modernization, and conversion of health facilities, should be accomplished in a planned, orderly fashion, consistent with identified priorities; and

(4) That the development and maintenance of adequate health care information and statistics essential to effective health planning and resources development be accomplished. [1979 1st ex.s. c 161 § 1.]

70.38.025 Definitions. When used in this chapter, the terms defined in this section shall have the meanings indicated.

(1) "Annual implementation plan" means a description of objectives which will achieve goals of the health systems plan and specific priorities among the objectives. The annual implementation plan is for a one-year period and must be reviewed and amended as necessary on an annual basis.

(2) "Board of health" means the state board of health created pursuant to chapter 43.20 RCW.

(3) "Capital expenditure" is an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a facility as its own contractor) which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been made by purchase, such expenditure shall be deemed a capital expenditure.

(4) "Council" means the state health coordinating council created in RCW 70.38.055 and described in Public Law 93-641.

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

(6) "Health care facility" means hospitals, psychiatric hospitals, tuberculosis hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, and home health agencies, and includes such facilities when owned and operated by the state or by a political subdivision or instrumentality of the state and such other facilities as required by Public Law 93-641 and implementing regulations, but does not include Christian Science sanitoriums operated, listed, or certified by the First Church of Christ Scientist, Boston, Massachusetts.

(7) "Health maintenance organization" means an entity as defined in Public Law 93-641 and, in addition, any organization defined under RCW 48.46.020(1).

(8) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services and as defined in Public Law 93-641.

(9) "Health systems agency" means a public regional planning body or a private nonprofit corporation which is organized and operated in a manner that is consistent with the laws of the state of Washington and Public Law 93-641 and which is capable of performing each of the functions described in RCW 70.38.085 and is capable as determined by the secretary of the United States department of health, education and welfare, upon recommendation of the governor, of performing each of the functions described in the federal law.

(10) "Health systems plan" means a detailed statement of goals and resources required to reach those goals as described in Public Law 93-641. Goals describe a healthful environment and health systems in the health service area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable cost, for all residents of the area; are responsive to the unique needs and resources of the health service area; and take into account national guidelines for health planning policy and state-wide health needs and priorities. The health systems plan is for a period longer than one year and must be reviewed and amended as necessary on an annual basis.

(11) "Institutional health services" means health services provided in or through health care facilities and health maintenance organizations and includes the entities in or through which such services are provided as defined in Public Law 93-641.

(12) "Long-range health facility plan" means a document prepared by each hospital which contains a description of its plans for substantial changes in its facilities and services for three years.

(13) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(14) "Provider" generally means a health care professional or an organization, institution, or other entity providing health care but the precise definition for this term shall be in accord with Public Law 93-641.

(15) "State health plan" means a document, described in Public Law 93-641, developed by the department, and approved by the state health coordinating council which recommends priorities for changes in the health system of the state to achieve the desired health status of the citizens of the state and describes the relationship of these priorities to national health priorities and to the priorities of the health systems agencies of the state as set forth in their health systems plans.

(16) "State medical facilities plan" means a public document, described in Public Law 93-641, which sets forth: The number and type of medical facility beds and

medical facilities needed to provide adequate inpatient care to people residing in the state and a plan for the distribution of such beds and facilities throughout the state; the number and type of outpatient and other medical facilities needed to provide adequate public health services and outpatient care to people residing in the state; and a plan for the distribution of such facilities throughout the state and the extent to which existing medical facilities in the state are in need of modernization or conversion, or construction of new facilities is indicated, and the priorities for such modernization, conversion, or construction projects. [1979 1st ex.s. c 161 § 2.]

70.38.035 State health planning and development agency—Designation. The department is designated, as the state health planning and development agency, as the sole and official agency of the state to administer and supervise the administration of the state responsibilities pursuant to The National Health Planning and Resources Development Act of 1974, Public Law 93-641, and rules and regulations promulgated thereunder. The department is designated as the agency of this state to accept, receive, retain, and administer federal funds made pursuant to the provisions of Public Law 93-641. Nothing in this chapter shall be construed to affect the authority of the state hospital commission pursuant to chapter 70.39 RCW. [1979 1st ex.s. c 161 § 3.]

70.38.045 Department planning and development duties and powers. The department is authorized and empowered to exercise such duties and powers as are prescribed for state health planning and development agencies in Public Law 93-641, including but not limited to the following:

(1) Conduct health planning activities, and implement the state health plan and the plans of the health systems agencies within the state which relate to the government of the state;

(2) Prepare and review and revise as necessary a preliminary state health plan to be submitted to the council for approval or disapproval and for use in developing the state plan;

(3) Assist the council in the review of the state medical facilities plan and in the performance of its functions generally;

(4) Serve as the designated planning agency of the state for the purposes of section 1122 of the Social Security Act, if the department maintains an agreement with the secretary, United States department of health, education and welfare pursuant to section 1122 of Public Law 92-603, and administer a state certificate of need program as provided in RCW 70.38.105, 70.38.115, and 70.38.125;

(5) After consideration of recommendations submitted by the health systems agencies respecting new institutional health services proposed to be offered within the state, make findings as to the need for such services;

(6) Review on a periodic basis, not less than every five years, all institutional health services being offered in the state and, after consideration of recommendations

submitted by health systems agencies respecting the appropriateness of such services, make public its findings. [1979 1st ex.s. c 161 § 4.]

70.38.055 Health coordinating council. (1) There is established a state health coordinating council.

(2) The council shall be composed of members who shall be appointed by the governor in accordance with the provisions of Public Law 93-641 and shall be considered appointed officials for whom compliance with section 1, chapter 104, Laws of 1975-'76 2nd ex. sess., (Ref. Bill No. 36), RCW 42.17.240, is required.

(3) The council shall, in addition to the appointed members, include as nonvoting, ex officio members the chairpersons of the house and senate committees on social and health services, the secretary of the department, the chairman of the hospital commission, or their designees, and an individual whom the chief medical director of the veterans administration shall have designated as a representative of the veterans administration who shall be a voting member.

(4) The council shall have a chairperson designated in a manner consistent with Public Law 93-641.

(5) The council shall conduct all of its business meetings in public pursuant to the "Open Public Meetings Act of 1971", chapter 42.30 RCW, and shall meet at least once in each calendar quarter of a year. Books and records of the council shall be subject to public disclosure in accordance with RCW 42.17.250 through 42.17.340.

(6) Members of the council shall serve without pay, but shall be entitled to reimbursement for travel expenses incurred as provided in RCW 43.03.050 and 43.03.060.

(7) The governor shall have the power to stagger the terms of the members so that one-third thereof may be appointed for an original term of one year, one-third for an original term of two years, and one-third for an original term of three years, with all subsequent appointments to be for terms of three years. [1979 1st ex.s. c 161 § 5.]

70.38.065 Council duties and powers. The council is authorized and empowered to exercise such duties and powers as are required for state-wide health coordinating councils in P.L. 93-641, including but not limited to the following:

(1) Review annually and coordinate the health systems plan and annual implementation plan of each health systems agency and report to the secretary of health, education and welfare its comments;

(2) Prepare and review and revise as necessary, at least annually, a state health plan which shall be made up of the health systems plans of the health systems agencies and which plan may, as found necessary by the state health coordinating council, contain revisions of such health systems plans to achieve their appropriate coordination or to deal more effectively with state-wide health needs;

(3) Review annually the budget of each health systems agency and report to the secretary of the United

States department of health, education and welfare its comments on such budget;

(4) Review applications submitted by the health systems agencies for planning and development grants, and report to the secretary of the United States department of health, education and welfare its comments;

(5) Advise the department generally on the performance of its functions; and

(6) Perform such duties in connection with the state health plan as may be required as a condition to the receipt of federal funds. [1979 1st ex.s. c 161 § 6.]

70.38.075 State medical facilities plan. The department is authorized and directed to prepare and administer a state medical facilities plan to comply with Public Law 93-641 and is empowered to take such action as might be required in the development and administration of such plan and the performance of state agency functions necessary to ensure that each entity which receives or has received financial assistance under Title XVI or Title VI of the Public Health Service Act complies with the assurances required to be made at the time such financial assistance was received. The state medical facilities plan shall be approved by the state health coordinating council as consistent with the state health plan. [1979 1st ex.s. c 161 § 7.]

70.38.085 Health systems agencies—Areas—Functions. There shall be established in accordance with Public Law 93-641, and implementing regulations, health service areas within the state and health systems agencies organized and established in accordance with such law.

Each health systems agency shall have as its primary responsibility the provision of effective health planning for its health service area and the promotion of the development within the area of health services, manpower, and facilities which meet identified needs, reduce documented inefficiencies, and implement the health plans of the agencies which shall include all classes of health care practitioners. To meet its primary responsibility, a health systems agency shall carry out such functions as are prescribed for health systems agencies in Public Law 93-641, including but not limited to the following functions:

(1) Assemble and analyze data concerning: The status and its determinants of the health of the residents of its health service area; the status of the health care delivery system in the area and the use of that system by the residents of the area; the effect which the area's health care delivery system has on the health of the residents of the area; the number, type, and location of the area's health resources including health services, manpower, and facilities; the patterns of utilization of the area's health resources; and the environmental and occupational exposure factors affecting immediate and long-term health conditions;

(2) Establish, annually review, and amend as necessary a health systems plan;

(3) Establish, annually review, and amend as necessary an annual implementation plan which describes objectives which will achieve the goals of the health systems plan and priorities among the objectives;

(4) Develop and publish specific plans and projects for achieving the objectives of the annual implementation plan;

(5) Review and make recommendations to the department respecting the need for new institutional health services proposed to be offered or developed in the health service area of such health systems agency;

(6) Review on a periodic basis, at least every five years, all institutional health services offered in the health service area of the agency and make recommendations to the department respecting the appropriateness of such services in the area;

(7) Recommend annually to the department projects for the modernization, construction, and conversion of medical facilities in the agency's health service area—which projects will achieve the health systems plan and annual implementation plan of the health systems agency and the priorities among such projects; and

(8) Seek the assistance of individuals and public and private entities in the health service area, to the extent practicable, in implementing the health systems plan and annual implementation plan. [1979 1st ex.s. c 161 § 8.]

70.38.095 Public disclosure. Public accessibility to records shall be accorded by health systems agencies pursuant to Public Law 93-641 and RCW 42.17.250 through 42.17.340. A health systems agency shall be considered a "public agency" for the sole purpose of complying with the "Open Public Meetings Act of 1971", chapter 42.30 RCW. [1979 1st ex.s. c 161 § 9.]

70.38.105 Health services and facilities requiring certificate of need. (Effective January 1, 1980.) (1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is consistent with the provisions of Public Law 93-641.

(3) No person shall offer or develop a new institutional health service, or undertake expenditures in preparation for such offering or development, unless a certificate of need authorizing such new institutional health services has been issued.

(4) New institutional health services subject to review under this chapter shall include:

(a) The construction, development, or other establishment of a new health care facility or health maintenance organization;

(b) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of one hundred and fifty thousand dollars which under generally accepted accounting principles consistently applied is a capital expenditure, excluding expenditures for site acquisition, acquisition of existing acute care health facilities, health maintenance organizations, or expenditures solely for the termination or reduction of beds or of a health service;

(c) A change in bed capacity of a health care facility or health maintenance organization which increases the total number of licensed beds or redistributes beds among facility and service categories of acute care, skilled nursing, intermediate care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months;

(d) Any new health services which are offered in or through a health care facility or health maintenance organization, and which were not offered on a regular basis by, in, or through such health care facility or health maintenance organization within the twelve-month period prior to the time such services would be offered; and

(e) Any expenditure by or on behalf of a health care facility or health maintenance organization in excess of one hundred and fifty thousand dollars made in preparation for the offering or development of a new institutional service and any arrangement or commitment made for financing the offering or development of the new institutional health service. Expenditures of preparation for the offering of a new institutional health service shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures only, without authorizing the development or offering of new institutional health services with respect to which such predevelopment expenditures are made.

(5) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

(6) Notwithstanding any other provision of this section, prior to October 1, 1980, new institutional health services of health maintenance organizations shall include only those services which are provided in or through a health care facility owned, operated, or otherwise utilized by the health maintenance organization. [1979 1st ex.s. c 161 § 10.]

Effective date—1979 1st ex.s. c 161: See RCW 70.38.915.

70.38.115 Certificates of need—Procedures—Rules. (Effective January 1, 1980.) (1) Certificates of need shall be issued, denied, suspended, or revoked by the secretary of the department, or his designee, in accord with the provisions of this chapter and rules and regulations proposed by the department and adopted by the board of health pursuant to this chapter. Rules and regulations shall establish review procedures and criteria for the certificate of need program.

(2) Criteria for the review of certificate of need applications shall include but not be limited to consideration of the following:

(a) The relationship of the health services being reviewed to the applicable health plans;

(b) The relationship of services reviewed to the long-range development plan, if any, of the persons providing or proposing such services;

(c) The need that the population served or to be served by such services has for such services;

(d) The availability of less costly or more effective alternative methods of providing such services;

(e) The immediate and the long-range financial feasibility of the proposal as well as the probable impact of the proposal on the cost of and charges for providing health services by the persons proposing the new institutional health service, including findings and recommendations of the Washington state hospital commission in the case of applications submitted by hospitals;

(f) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

(g) The availability of resources including health manpower, management personnel, and funds for capital and operating needs for the provision of the services and the availability of alternative uses of such resources for the provision of other health services;

(h) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary and support services;

(i) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas;

(j) The special needs and circumstances of health maintenance organizations and the enrolled participants for whom the health maintenance organization has a contractual obligation to serve or may reasonably be expected to serve in the future. In order to permit health maintenance organizations to plan on the basis of enrolled participants rather than a geographical service area, health maintenance organization projects shall be evaluated on the basis of cost-effectiveness to the enrolled participants of the health maintenance organization: *Provided however*, That consideration of a new institutional health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health services from the existing providers in the area;

(k) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(l) In the case of a construction project, the costs and methods of the proposed construction, including the cost and methods of energy provision, and the probable impact of the construction project reviewed on the cost of providing health services by the person proposing such construction project; and

(m) The special needs and circumstances of osteopathic hospitals and nonallopathic services.

(3) When a hospital has developed a long-range health facility plan, pursuant to RCW 70.38.145, and the proposed new institutional health service is consistent with such plan, an expedited review process shall be instituted by the department as it has been done since the enactment of chapter 70.38 RCW in 1971.

(4) The department in making its final decision may issue a conditional certificate of need if it finds that the project is justified only under specific circumstances. The conditions may be released if it can be substantiated that the conditions are no longer valid and the release of

such conditions would be consistent with the purposes of this chapter.

(5) Criteria adopted for review in accordance with subsection (2) of this section may vary according to the purpose for which the particular review is being conducted or the type of health service reviewed.

(6) Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked shall be afforded an opportunity for administrative review in accordance with chapter 34.04 RCW and a hearing shall be held within one hundred twenty days of a request therefor. [1979 1st ex.s. c 161 § 11.]

Effective date—1979 1st ex.s. c 161: See RCW 70.38.915.

70.38.125 Certificates of need—Issuance—Duration—Penalties for violations. (Effective January 1, 1980.) (1) A certificate of need shall be valid for two years: *Provided*, That one six-month extension may be made if it can be substantiated that substantial and continuing progress toward commencement of the project has been made as defined by regulations to be adopted pursuant to this chapter.

(2) A project for which a certificate of need has been issued shall be commenced during the validity period for the certificate of need.

(3) The department, in cooperation with the health systems agencies established in the state under the provision of Public Law 93-641, and the hospital commission, in the case of hospital projects, shall monitor the costs and components of approved projects to assure conformance with certificates of need that have been issued. Rules and regulations adopted shall specify when changes in the cost or components of a project require reevaluation of the project. The department may require applicants to submit periodic progress reports on approved projects or other information as may be necessary to effectuate its monitoring responsibilities.

(4) The secretary of the department, in the case of a new health facility, shall not issue any license, and the insurance commissioner, in the case of a new health maintenance organization, shall not issue any certificate of registration, unless and until a prior certificate of need shall have been issued by the department for the offering or development of such new health facility or new health maintenance organization respectively.

(5) Any person who offers or develops a new institutional health service without first being granted a certificate of need by the secretary of the department shall be liable to the state in an amount not to exceed one hundred dollars a day for each day of such unauthorized offering or development. Such amounts of money shall be recoverable in an action brought by the attorney general on behalf of the state in the superior court of any county in which the unauthorized offering or development occurred. Any amounts of money so recovered by the attorney general shall be deposited in the state general fund.

(6) The department may bring any action to enjoin a violation or the threatened violation of the provisions of this chapter or any rules and regulations adopted pursuant to this chapter, or may bring any legal proceeding

authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county. [1979 1st ex.s. c 161 § 12.]

Effective date—1979 1st ex.s. c 161: See RCW 70.38.915.

70.38.135 Department services and surveys—Board of health rules. (1) The secretary of the department shall have authority to:

(a) Provide when needed temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee-for-service basis; and

(b) Make or cause to be made such on-site surveys of health care or medical facilities as may be necessary to the development of the state health plan and state medical facilities plan and the administration of the certificate of need program.

(2) Upon recommendation of the department the board of health shall have authority to:

(a) Promulgate and enforce rules and regulations under which providers doing business with the state shall submit to the department such data related to health and health care as the department finds necessary to the performance of its functions under this chapter;

(b) Promulgate rules and regulations pertaining to the maintenance and operation of medical facilities which receive federal assistance under the provisions of Title XVI;

(c) Promulgate rules and regulations in implementation of the provisions of this chapter, including the establishment of procedures for public hearings for predecisions and post-decisions on applications for certificate of need. [1979 1st ex.s. c 161 § 13.]

70.38.145 Long-range health facility plans. (1) Long-range health facility plans shall be filed with the appropriate health systems agency effective January 1, 1984. In order to ensure a streamlined planning process with the minimum of duplication, a common form for such plan shall be developed by the department, in cooperation with the health systems agencies and the Washington state hospital commission, which shall also be utilized as the three-year capital expenditure plan required by the hospital commission.

(2) The health systems agency shall review all such health facility plans in its area, identify any significant inconsistencies with the health systems plan for that area, and assist hospitals to cooperatively resolve inconsistencies among their plans and the health systems plan.

(3) An expedited certificate of need review shall be conducted by the department when:

(a) Long-range health facility plans have been developed in accordance with the requirements of this section; and

(b) When an application for a certificate of need has been found to be consistent with the applicant's long-range health facility plan and the applicable health systems plan, annual implementation plan, state health plan, and state medical facilities plan; and

(c) When there has not been a significant change, since the long-range health facility plan was approved, in existing health facilities of the same type or in the need for such health facilities and services. [1979 1st ex.s. c 161 § 14.]

70.38.155 Certificates of need—Savings clause. The enactment of this chapter shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to *the effective date of this act. [1979 1st ex.s. c 161 § 15.]

*Reviser's note: "[T]he effective date of this act"; see RCW 70.38.915.

70.38.905 Conflict with federal law—Construction. In any case where the provisions of this chapter may directly conflict with provisions of Public Law 93-641 or any amendments thereto, or regulations promulgated thereunder, the provisions of Public Law 93-641 shall supersede and be paramount. [1979 1st ex.s. c 161 § 16.]

70.38.910 Severability—1979 1st ex.s. c 161. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1979 1st ex.s. c 161 § 17.]

70.38.915 Effective dates—Pending certificates of need. (1) *Sections 10, 11, 12, and 21 shall take effect on January 1, 1980.

(2) Any certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to January 1, 1980, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to **the effective date of this 1979 act, and the regulations adopted thereunder. [1979 1st ex.s. c 161 § 19.]

Reviser's notes: *(1) Sections 10, 11, and 12 are codified as RCW 70.38.105, 70.38.115, and 70.38.125. Section 21 was a repealer which repeals RCW 70.38.020, 70.38.110 through 70.38.190, and 70.38.210.

** (2) The effective date of those remaining sections of 1979 1st ex.s. c 161 which do not have a specific effective date indicated in this section is September 1, 1979.

70.38.920 Short title. This act may be cited as the "State Health Planning and Resources Development Act". [1979 1st ex.s. c 161 § 22.]

Chapter 70.39

**HOSPITAL HEALTH CARE SERVICES—
HOSPITAL COMMISSION**

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70.39.010 Purpose. The primary purpose of this chapter is to promote the economic delivery of high quality and effective hospital health care services to the people by establishing a hospital commission with authority over financial disclosure and budget and prospective rate review and other related matters, which will assure all purchasers of hospital health care services that total hospital costs are reasonably related to total services, that hospital rates are reasonably related to aggregate costs, and that such rates are set equitably among all purchasers of these services without undue discrimination.

The legislature finds and declares that rising hospital costs are a vital concern to the people of this state because of the danger which is posed that hospital and health care services are fast becoming out of the economic reach of the majority of our population. It is further declared that health care is a right of the people and one of the primary purposes for which governments are established, and it is, therefore, essential that an effective cost control program be established which will both enable and motivate hospitals to control their spiraling costs. It is the legislative intent, in pursuance of this declared public policy, to provide for uniform measures on a state-wide basis to control hospital costs without the sacrifice of quality of service. [1973 1st ex.s. c 5 § 2.]

70.39.020 Definitions. As used in this chapter:

(1) "Commission" means the hospital commission of the state of Washington as created by this chapter;

(2) "Consumer" means any person whose occupation is other than the administration of health activities or the providing of health services, who has no fiduciary obligation to a health facility or other health agency, and who has no material financial interest in the rendering of health services;

(3) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW, but shall not include any health care institution conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance

with the creed or tenets of any church or denomination. [1973 1st ex.s. c 5 § 3.]

70.39.030 Hospital commission—Created—Membership. There is hereby created a hospital commission, which shall be a separate and independent commission of the state. The commission shall be composed of five members appointed by the governor, and generally representative of the public as consumers, labor, business, and hospitals, and shall be individuals concerned with the delivery of quality health care; but in no event shall more than two members have any fiduciary obligation to a health facility or other health agency, nor any direct financial interest in the rendering of health services. In cases when proposed rate increases for osteopathic hospitals are to be considered, the representative of osteopathic hospitals on the technical advisory committee shall replace a hospital representative on the commission. [1973 1st ex.s. c 5 § 4.]

70.39.040 Hospital commission—Terms—Vacancies. Members of the commission shall serve for four-year terms: *Provided*, That upon the expiration of the initial four-year terms, two persons shall be appointed for three-year terms and three persons for four-year terms and thereafter all members of the commission shall serve for four-year terms. Appointments shall require senate confirmation. No member shall serve on the commission for more than two consecutive terms. A vacancy shall be filled by appointment for the remainder of the unexpired term and the initial appointments and vacancies shall not require senate confirmation until the legislature next convenes. [1977 c 36 § 1; 1973 1st ex.s. c 5 § 5.]

70.39.050 Hospital commission—Officers—Meetings—Compensation. The member representing consumers of health care services shall serve as chairman. The commission shall elect from its members a vice-chairman biennially. Meetings of the commission shall be held as frequently as its duties require. The commission shall keep minutes of its meetings and adopt procedures for the governing of its meetings, minutes, and transactions.

Three members shall constitute a quorum, but a vacancy on the commission shall not impair its power to act. No action of the commission shall be effective unless three members concur therein.

The members of the commission shall receive no compensation but shall be reimbursed for their expenses while attending meetings of the commission in the same manner as legislators engaged in interim committee business as in RCW 44.04.120. [1973 1st ex.s. c 5 § 6.]

70.39.060 Hospital commission—Director—Secretary—Staff—Services. The commission shall appoint a full time executive director and a deputy director and confidential secretary who shall be exempt from the civil service law, chapter 41.06 RCW and who shall perform the duties delegated by the commission. The executive director shall be the chief administrative

officer of the commission and shall be subject to its direction.

The commission shall employ such other staff as are necessary to fulfill the responsibilities and duties of the commission, such staff to be subject to the civil service law, chapter 41.06 RCW, and under the supervision of the executive director. In addition, the commission may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise.

Any such contractor or consultant shall be prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility, without specific permission of the commission.

The commission may apply for and receive and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects relating to hospital health care costs. [1977 c 35 § 1; 1973 1st ex.s. c 5 § 7.]

70.39.070 Technical advisory committee—Members—Terms—Officers—Meetings—Expenses. In order to assist the commission in carrying out its duties, the governor shall appoint a technical advisory committee, hereinafter referred to as "committee", which shall consist of eleven members as follows:

(1) One member who shall be a certified public accountant licensed pursuant to chapter 18.04 RCW and who shall be knowledgeable in the financial affairs of hospitals.

(2) One member who shall be a health care practitioner licensed under the laws of this state and who shall be knowledgeable in hospital administration.

(3) Five members who shall be representative of the interest of investor-owned, district, not-for-profit, osteopathic, and university hospitals.

(4) One member who shall be representative of consumers of health care.

(5) One member who shall be the secretary of the department of social and health services, or his designee, to provide continuing liaison, data and support from those functions of the department which may affect the responsibilities of the commission.

(6) One member who shall be the director of the planning and community affairs agency, or his designee, to provide continuing liaison with the planning efforts of the comprehensive health planning council.

(7) One member of the commission, elected by the commission.

The members shall serve concurrently and shall have four-year terms. Any vacancy shall be filled by appointment by the governor and an appointee selected to fill such vacancy shall hold office for the balance of the term for which his predecessor was appointed. The committee shall elect from its members a chairman and a vice-chairman to serve concurrently with the chairman. The executive director of the commission shall act as

executive secretary to the committee, and the commission shall otherwise offer such staff services and supplies as the committee may require to carry out its responsibilities.

The committee shall meet on call of the chairman of the commission, or on request of a majority of the commission. Members of the committee shall serve without compensation but shall be reimbursed for their expenses in the same manner as members of the commission. [1973 1st ex.s. c 5 § 8.]

70.39.080 Technical advisory committee—Duties. The committee shall have the duty upon the request of the commission to consult with and make recommendations to the commission:

- (1) On matters of policy;
- (2) On rules and regulations proposed by the commission to implement this chapter;
- (3) On analyses and studies of hospital health care costs and related matters which may be undertaken by the commission; and
- (4) On such other matters as the commission may refer. [1973 1st ex.s. c 5 § 9.]

70.39.090 Hospital commission—Subcommittees. To further the purposes of this chapter, the commission may create committees from its membership, and may create such ad hoc advisory committees in specialized fields, related to the functions of hospitals, as it deems necessary, to supplement the resources provided by the technical advisory committee. [1973 1st ex.s. c 5 § 10.]

70.39.100 Uniform system of hospital accounting and reporting. (1) The commission, after study and in consultation with advisory committees, if any, shall establish by the promulgation of rules and regulations pursuant to the Administrative Procedure Act, chapter 34.04 RCW, a uniform system of accounting and financial reporting, including such cost allocation methods as it may prescribe, by which hospitals shall record their revenues, expenses, other income, other outlays, assets and liabilities, and units of service. All hospitals shall adopt the system for their fiscal year period to be effective at such time and date as the commission shall direct. In determining the effective date for reporting requirements, the commission shall be mindful both of the immediate need for uniform hospital reporting information to effectuate the purposes of this chapter and the administrative and economic difficulties which hospitals may encounter in conversion, but in no event shall such effective date be later than two and one-half years from the date of the formation of the commission.

(2) In establishing such accounting systems and uniform reporting procedures, the commission shall take into consideration:

- (a) Existing systems of accounting and reporting presently utilized by hospitals;
- (b) Differences among hospitals according to size; financial structure; methods of payment for services; and scope, type, and method of providing services; and
- (c) Other pertinent distinguishing factors.

(3) The commission shall, where appropriate, provide for modification, consistent with the purposes of this chapter, of reporting requirements to correctly reflect these differences among hospitals, and to avoid otherwise unduly burdensome costs in meeting the requirements of the uniform system of accounting and financial reporting.

(4) The accounting system, where appropriate, shall be structured so as to establish and differentiate costs incurred for patient-related services rendered by hospitals, as distinguished from those incurred with reference to educational research and other nonpatient-related activities including but not limited to charitable activities of such hospitals. [1973 1st ex.s. c 5 § 11.]

70.39.110 Annual reports by hospitals. (1) Each hospital shall file annually with the commission after the close of the fiscal year:

- (a) A balance sheet detailing the assets, liabilities, and net worth of the hospital;
- (b) A statement of income and expenses;
- (c) Such other reports of the costs incurred in rendering services as the commission may prescribe.

(2) Where more than one licensed hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.

(3) The commission shall require certification of specified financial reports by the hospital's certified public accountant, and may require attestation as to such statements from responsible officials of the hospital that such reports have to the best of their knowledge and belief been prepared in accordance with the prescribed system of accounting and reporting.

(4) All reports, except privileged medical information, filed under this chapter shall be open to public inspection.

(5) The commission shall have the right of inspection of hospital books, audits, and records as reasonably necessary to verify hospital reports. [1973 1st ex.s. c 5 § 12.]

70.39.120 Hospital costs and finances—Analyses and studies—Reports. (1) The commission shall from time to time undertake analyses and studies relating to hospital health care costs and to the financial status of any hospital or hospitals subject to the provisions of this chapter, and may publish and disseminate such information as it deems desirable in the public interest. It shall further require the filing of information concerning the total financial needs of each hospital and the resources available or expected to become available to meet such needs, including the effect of proposals made by area-wide and state comprehensive health planning agencies.

(2) The commission shall also prepare and file such summaries and compilations or other supplementary reports based on the information filed with the commission hereunder as will advance the purposes of this chapter. [1973 1st ex.s. c 5 § 13.]

70.39.130 Report to governor and legislature. The commission shall prepare and, prior to each legislative

session beginning in January, transmit to the governor and to the legislature an annual report of commission operations and activities for the preceding fiscal year. This report shall include such findings and recommendations as the commission deems necessary. [1977 c 75 § 82; 1973 1st ex.s. c 5 § 14.]

70.39.140 Hospital rates—Review and investigation—Costs—Establishment of rates—Coordination with federal programs. From and after a date not less than twelve months but not more than twenty-four months after the adoption of the uniform system of accounting and financial reporting required by RCW 70.39.100, as the commission may direct, the commission shall have the power to initiate such reviews or investigations as may be necessary to assure all purchasers of hospital health care services that the total costs of a hospital are reasonably related to the total services offered by that hospital, that the hospital's aggregate revenues as expressed by rates are reasonably related to the hospital's aggregate costs; and that rates are set equitably among all purchasers or classes of purchasers of services without undue discrimination or preference.

In order to properly discharge these obligations, the commission shall have full power to review projected annual revenues and approve the reasonableness of rates proposed to generate that revenue established or requested by any hospital subject to the provisions of this chapter. No hospital shall charge for services at rates other than those established in accordance with the procedures established hereunder.

In the interest of promoting the most efficient and effective use of hospital health care service, the commission may promote and approve alternative methods of rate determination and payment of an experimental nature that may be in the public interest and consistent with the purposes of this chapter.

The commission shall serve as the state agency responsible for coordinating state actions and otherwise responding and relating to the efforts of the cost of living council, or its successor, in planning and implementing federal cost containment programs with respect to hospitals and related health care institutions as authorized by the Federal Economic Stabilization Act of 1970, as now or hereafter amended, and any rules or regulations promulgated thereto. In carrying out this responsibility, the commission may serve as the state agency responsible for recommending increases in rates for hospitals and related health care institutions to the cost of living council, or its successor; may apply to the cost of living council for authorization to administer a control program in Washington state in lieu of the federal controls established and otherwise administered by the cost of living council; may assume another function or role authorized by appropriate federal regulations implementing the Federal Economic Stabilization Act of 1970; or assume any combination of such roles or functions as it may determine will most effectively contain the rising costs of the varying kinds of hospitals and related health care institutions in Washington state. In determining its functions or roles in relation to the efforts to the cost of living council, or its successor, the

commission shall seek to ensure coordination, and the reduction of duplicatory cost containment efforts, by the state and federal governments, as well as the diligent fulfillment of the purposes of this chapter and declared public policy and legislative intent herein: *Provided, however,* That in cases where the rates of nursing homes or similar health institutions are subject to review pursuant to the provisions of the Federal Economic Stabilization Act of 1970 or any rules or regulations promulgated thereto, the members of the commission representing hospitals shall not sit in the proceedings nor vote, and the governor shall appoint an ad hoc member representing nursing homes or similar health institutions in lieu thereof, who shall have the same powers as the other members with respect to such review only. [1974 ex.s. c 163 § 1; 1973 1st ex.s. c 5 § 15.]

70.39.150 Powers and duties of commission. To properly carry out its authority the commission shall:

(1) Compile all relevant financial and accounting data in order to have available the statistical information necessary to properly conduct rate review and approval. Such data shall include necessary operating expenses, appropriate expenses incurred for rendering services to patients who cannot or do not pay, all properly incurred interest charges, and reasonable depreciation expenses based on the expected useful life of the property and equipment involved. The commission shall define and prescribe by rule and regulation the types and classes of charges which cannot be changed except as provided by the procedure contained in RCW 70.39.160 and it shall also obtain from each such hospital a current rate schedule as well as any subsequent amendments or modifications of that schedule as it may require.

(2) Permit any nonprofit hospital subject to the provisions of this chapter to charge reasonable rates which will permit the hospital to render effective and efficient service in the public interest and on a solvent basis.

(3) Permit any proprietary profit-making hospital subject to the provisions of this chapter to charge reasonable rates which will permit the hospital to render effective and efficient service in the public interest and which includes an allowance for a fair return to stockholders based upon actual investment or, if the hospital elects, upon the fair value of the investment on the effective date of this section: *Provided,* That once the election is made it may not be changed without the approval of the commission.

(4) Take into account, in the determination of reasonable rates under this section for each hospital, the recommendations of appropriate area-wide and state comprehensive health planning agencies to ensure compliance with Washington comprehensive health planning law, chapter 70.38 RCW.

(5) Permit, in considering a request for change in or initiating a review of rate schedules or other charges, any hospital subject to the provisions of this chapter to charge rates which will in the aggregate produce sufficient total revenue for the hospital to meet all of the reasonable obligations specified in this chapter. [1977 ex.s. c 154 § 1; 1973 1st ex.s. c 5 § 16.]

Reviser's note: The effective date of 1977 ex.s. c 154 § 1 was September 21, 1977; see preface 1977 session laws.

70.39.160 Changes in rates—Procedure. From and after the date determined by the commission pursuant to RCW 70.39.140, no hospital subject to the provisions of this chapter shall change or amend that schedule of rates and charges of the type and class which cannot be changed without prior approval of the commission, except in accordance with the following procedure:

(1) Any request for a change in rate schedules or other charges must be filed in writing in the form and content prescribed by the commission and with such supporting data as the hospital seeking the change deems appropriate. Unless the commission orders otherwise as provided for in subsection (4) of this section, no hospital shall establish such changes except after notice to the commission of at least thirty days from the time the rate is intended to go into effect. Upon receipt of notice, the commission may suspend the effective date of any proposed change. In any such case a formal written statement of the reasons for the suspension will be promptly submitted to the hospital. Unless suspended, any proposed change shall go into effect upon the date specified in the application.

(2) In any case where such action is deemed necessary, the commission shall promptly, but in any event within thirty days, institute proceedings as to the reasonableness of the proposed changes. The suspension may extend for a period of not more than thirty days beyond the date the change would otherwise go into effect: *Provided*, That should it be necessary, the commission may extend the suspension for an additional thirty days. After the expiration of ninety days from the date the rate is intended to go into effect the new rate will go into effect, if the commission does not approve, disapprove, or modify the request by that time.

(3) Such proposed changes shall be considered at a public hearing, the time and place of which shall be determined by the commission. The hearing shall be conducted by the commission. Evidence for and against the requested change may be introduced at the time of the hearing by any interested party and witnesses may be heard. The hearing may be conducted without compliance with formal rules of evidence.

(4) The commission may, in its discretion, permit any hospital to make a temporary change in rates which shall be effective immediately upon filing and in advance of any review procedure when it deems it in the public interest to do so. Notwithstanding such temporary change in rates, the review procedures set out in this section shall be conducted by the commission as soon thereafter as is practicable.

(5) Every decision and order of the commission in any contested proceeding shall be in writing and shall state the grounds for the commission's conclusions. The effects of such orders shall be prospective in nature. [1973 1st ex.s. c 5 § 17.]

70.39.170 Budget—Expenses—Assessments—Hospital commission account. The commission

shall biennially prepare a budget which shall include its estimated income and expenditures for administration and operation for the biennium, to be submitted to the governor for transmittal to the legislature for approval.

Expenses of the commission shall be financed by assessment against hospitals in an amount to be determined biennially by the commission, but not to exceed four one-hundredths of one percent of each hospital's gross operating costs to be levied and collected from and after July 1, 1973 for the provision of hospital services for its last fiscal year ending on or before June 30th of the preceding calendar year. Budgetary requirements in excess of that limit may be financed by a general fund appropriation by the legislature. All moneys collected are to be deposited by the state treasurer in the hospital commission account in the general fund which is hereby created.

Any amounts raised by the collection of assessments from hospitals provided for in this section which are not required to meet appropriations in the budget act for the current fiscal year shall be available to the commission in succeeding years. [1973 1st ex.s. c 5 § 18.]

70.39.180 Rules and regulations—Public hearings—Investigations—Subpoena power. In addition to the powers granted to the commission elsewhere in this chapter, the commission may:

(1) Adopt, amend, and repeal rules and regulations respecting the exercise of the powers conferred by this chapter, subject to the provisions of the Administrative Procedure Act, chapter 34.04 RCW applicable to the promulgation of rules and regulations.

(2) Hold public hearings, conduct investigations, and subpoena witnesses, papers, records, and documents in connection therewith. The commission may administer oaths or affirmations in any hearing or investigation.

(3) Exercise, subject to the limitations and restrictions herein imposed, all other powers which are reasonably necessary or essential to carry out the expressed objects and purposes of this chapter. [1973 1st ex.s. c 5 § 19.]

70.39.190 Review. Any person aggrieved by a final determination of the commission as to any rule, regulation, or determination under the provisions of this chapter shall be entitled to an administrative hearing and judicial review in accordance with the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 5 § 20.]

70.39.200 Penalties for violations. Every person who shall violate or knowingly aid and abet the violation of this chapter or any valid orders, rules, or regulations thereunder, or who fails to perform any act which it is herein made his duty to perform shall be guilty of a misdemeanor. Following official notice to the accused by the commission of the existence of an alleged violation, each day upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of this chapter may be enjoined from continuing such violation. [1973 1st ex.s. c 5 § 21.]

70.39.900 Severability—1973 1st ex.s. c 5. If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 5 § 22.]

70.39.910 Liberal construction—1973 1st ex.s. c 5. Consistent with the purposes enumerated in RCW 70.39.010, the provisions of this chapter shall be liberally construed, and shall not be limited by any rule of strict construction. [1973 1st ex.s. c 5 § 23.]

Chapter 70.40

HOSPITAL AND MEDICAL FACILITIES SURVEY AND CONSTRUCTION ACT

Sections

70.40.010	Short title.
70.40.020	Definitions.
70.40.030	Section of hospital and medical facility survey and construction established—Duties.
70.40.040	General duties of the secretary.
70.40.060	Development of program for construction of facilities needed.
70.40.070	Distribution of facilities.
70.40.080	Federal funds—Application for—Deposit, use.
70.40.090	State plan—Publication—Hearing—Approval by surgeon general—Modifications.
70.40.100	Plan shall provide for construction in order of relative needs.
70.40.110	Minimum standards for maintenance and operation.
70.40.120	Applications for construction projects—Diagnostic, treatment centers.
70.40.130	Hearing—Approval.
70.40.140	Inspection of project under construction—Certification as to federal funds due.
70.40.150	Hospital and medical facility construction fund—Deposits, use.
70.40.900	Severability—1949 c 197.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

70.40.010 Short title. This chapter may be cited as the "Washington Hospital and Medical Facilities Survey and Construction Act." [1959 c 252 § 1; 1949 c 197 § 1; Rem. Supp. 1949 § 6090–60.]

70.40.020 Definitions. As used in this chapter:

(1) "Secretary" means the secretary of the state department of social and health services;

(2) "The federal act" means Title VI of the public health service act, as amended, or as hereafter amended by congress;

(3) "The surgeon general" means the surgeon general of the public health service of the United States;

(4) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;

(5) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and

administrative offices operated in connection with public health centers;

(6) "Nonprofit hospital" and "nonprofit medical facility" means any hospital or medical facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(7) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act. [1979 c 141 § 96; 1959 c 252 § 2; 1949 c 197 § 2; Rem. Supp. 1949 § 6090–61.]

70.40.030 Section of hospital and medical facility survey and construction established—Duties. There is hereby established in the state department of social and health services a "section of hospital and medical facility survey and construction" which shall be administered by a full time salaried head under the supervision and direction of the secretary. The state department of social and health services, through such section, shall constitute the sole agency of the state for the purpose of:

(1) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital and medical facility construction; and

(2) Developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in this chapter. [1979 c 141 § 97; 1959 c 252 § 3; 1949 c 197 § 3; Rem. Supp. 1949 § 6090–62.]

70.40.040 General duties of the secretary. In carrying out the purposes of the chapter the secretary is authorized and directed:

(1) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(2) To provide such methods of administration, appoint a head and other personnel of the section and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(3) To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee for service basis and do not involve the performance of administrative duties;

(4) To the extent that he considers desirable to effectuate the purposes of this chapter, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions public or private;

(5) To accept on behalf of the state and to deposit with the state treasurer, any grant, gift, or contribution made to assist in meeting the cost of carrying out the purposes of this chapter, and to expend the same for such purpose; and

(6) To make an annual report to the governor on activities pursuant to this chapter, including recommendations for such additional legislation as the secretary considers appropriate to furnish adequate hospital and

medical facilities to the people of this state. [1979 c 141 § 98; 1977 c 75 § 83; 1959 c 252 § 4; 1949 c 197 § 4; Rem. Supp. 1949 § 6090-63.]

70.40.060 Development of program for construction of facilities needed. The secretary is authorized and directed to make an inventory of existing hospitals and medical facilities, including public nonprofit and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and medical facility services to all the people of the state. [1979 c 141 § 99; 1959 c 252 § 6; 1949 c 197 § 6; Rem. Supp. 1949 § 6090-65.]

70.40.070 Distribution of facilities. The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital and medical facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility service reasonably accessible to all persons in the state. [1959 c 252 § 7; 1949 c 197 § 7; Rem. Supp. 1949 § 6090-66.]

70.40.080 Federal funds—Application for—Deposit, use. The secretary is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited with the state treasurer and shall be available to the secretary for expenditure in carrying out the purposes of this part. Any such funds received and not expended for such purposes shall be repaid to the treasurer of the United States. [1979 c 141 § 100; 1949 c 197 § 8; Rem. Supp. 1949 § 6090-67.]

70.40.090 State plan—Publication—Hearing—Approval by surgeon general—Modifications. The secretary shall prepare and submit to the surgeon general a state plan which shall include the hospital and medical facility construction program developed under this chapter and which shall provide for the establishment, administration, and operation of hospital and medical facility construction activities in accordance with the requirements of the federal act and the regulations thereunder. The secretary shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the secretary shall publish a general description of the provisions thereof in at least one newspaper having general circulation in the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations.

The secretary shall from time to time review the hospital and medical facility construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal act, as he may deem advisable. [1979 c 141 § 101; 1959 c 252 § 8; 1949 c 197 § 9; Rem. Supp. 1949 § 6090-68.]

70.40.100 Plan shall provide for construction in order of relative needs. The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need. [1949 c 197 § 11; Rem. Supp. 1949 § 6090-70.]

70.40.110 Minimum standards for maintenance and operation. The secretary shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and medical facilities which receive federal aid for construction under the state plan. [1979 c 141 § 102; 1959 c 252 § 9; 1949 c 197 § 10; Rem. Supp. 1949 § 6090-69.]

70.40.120 Applications for construction projects—Diagnostic, treatment centers. Applications for hospital and medical facility construction projects for which federal funds are requested shall be submitted to the secretary and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or medical facility: *Provided*, That except as may be permitted by federal law no application for a diagnostic or treatment center shall be approved unless the applicant is (1) a state, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital. Each application for a construction project shall conform to federal and state requirements. [1979 c 141 § 103; 1959 c 252 § 10; 1949 c 197 § 12; Rem. Supp. 1949 § 6090-71.]

70.40.130 Hearing—Approval. The secretary shall afford to every applicant for a construction project an opportunity for a fair hearing. If the secretary, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of RCW 70.40.120 and is otherwise in conformity with the state plan, he shall approve such application and shall recommend and forward it to the surgeon general. [1979 c 141 § 104; 1949 c 197 § 13; Rem. Supp. 1949 § 6090-72.]

70.40.140 Inspection of project under construction—Certification as to federal funds due. From time to time the secretary shall inspect each construction project approved by the surgeon general, and, if the inspection so warrants, the secretary shall certify to the surgeon general that work has been performed upon the

project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant. [1979 c 141 § 105; 1949 c 197 § 14; Rem. Supp. 1949 § 6090-73.]

70.40.150 Hospital and medical facility construction fund—Deposits, use. The secretary is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants or to approve applicants for federal funds and authorize the payment of such funds directly to such applicants as may be allowed by federal law. To achieve that end there is hereby established, separate and apart from all public moneys and funds of this state, a trust fund to be known as the "hospital and medical facility construction fund", of which the state treasurer shall ex officio be custodian. Moneys received from the federal government for construction projects approved by the surgeon general shall be deposited to the credit of this fund, shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Vouchers covering all payments from the hospital and medical facility construction fund shall be prepared by the department of social and health services and shall bear the signature of the secretary or his duly authorized agent for such purpose, and warrants therefor shall be signed by the state treasurer. [1973 c 106 § 31; 1959 c 252 § 11; 1949 c 197 § 15; Rem. Supp. 1949 § 6090-74.]

70.40.900 Severability—1949 c 197. If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1949 c 197 § 16; no RRS.]

Chapter 70.41

HOSPITAL LICENSING AND REGULATION

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70.41.020	Definitions.
70.41.030	State board of health—Standards, rules and regulations—Fair hearing procedures.
70.41.040	Enforcement of chapter—Personnel—Merit system.
70.41.080	Fire protection.
70.41.090	Hospital license required.
70.41.100	Applications for licenses and renewals—Fees.
70.41.110	Licenses, provisional licenses—Issuance, duration, assignment, posting.
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70.41.170	Operating or maintaining unlicensed hospital—Penalty.
70.41.180	Physicians' services.

70.41.190 Retention and preservation of records of patients.
70.41.900 Severability—1955 c 267.

Actions for negligence against, evidence and proof required to prevail: RCW 4.24.290.

Hospitals, hospital personnel, actions against, limitation of: RCW 4.16.350.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

Records of hospital committee or board, immunity from process: RCW 4.24.250.

Rendering emergency care, immunity from civil liability: RCW 18.71.220.

70.41.010 Declaration of purpose. The primary purpose of this chapter is to promote safe and adequate care of individuals in hospitals through the development, establishment and enforcement of minimum hospital standards for maintenance and operation. To accomplish these purposes, this chapter provides for:

- (1) The licensing and inspection of hospitals;
- (2) The establishment of a Washington state hospital advisory council;
- (3) The establishment by the state board of health of standards, rules and regulations for the construction, maintenance and operation of hospitals;
- (4) The enforcement by the Washington state department of social and health services of the standards, rules and regulations established by the board. [1979 c 141 § 106; 1955 c 267 § 1.]

70.41.020 Definitions. Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

- (1) "Department" means the Washington state department of social and health services;
- (2) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include maternity homes, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in

accordance with the creed or tenets of any well recognized church or religious denominations;

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof;

(4) "Board" means the state board of health. [1971 ex.s. c 189 § 8; 1955 c 267 § 2.]

70.41.030 State board of health—Standards, rules and regulations—Fair hearing procedures. The board, shall establish and adopt such minimum standards, rules and regulations pertaining to the construction, maintenance and operation of hospitals, and rescind, amend or modify such rules and regulations from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. All rules and regulations to become effective shall be filed with the office of the code reviser.

The board shall advise and consult with the department in matters of policy affecting the administration of this chapter, and shall conduct fair hearing procedures as provided in RCW 70.41.130. [1971 ex.s. c 189 § 9; 1955 c 267 § 3.]

Sunset Act application: See note following RCW 43.20.030.

70.41.040 Enforcement of chapter—Personnel—Merit system. The enforcement of the provisions of this chapter and the standards, rules and regulations established hereunder by the board, shall be the responsibility of the department which shall cooperate with the joint commission on the accreditation of hospitals. The board shall advise on the employment of personnel and the personnel shall be under the merit system or its successor. [1955 c 267 § 4.]

70.41.080 Fire protection. Standards for fire protection and the enforcement thereof, with respect to all hospitals to be licensed hereunder shall be the responsibility of the state fire marshal, who shall adopt, after approval by the board, such recognized standards as may be applicable to hospitals for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the state fire marshal in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the state fire marshal or his deputy, shall make an inspection of the hospital to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as adopted pursuant to this chapter, he shall promptly make a written report to the hospital and to the department listing the corrective actions required and the time allowed for accomplishing such corrections. The applicant or licensee shall notify the state fire marshal upon completion of any corrections required by him, and the state fire marshal, or his deputy, shall make a reinspection of such premises. Whenever the hospital to be licensed meets with the approval of the state fire

marshal, he shall submit to the department a written report approving the hospital with respect to fire protection, and such report is required before a full license can be issued. The state fire marshal shall make or cause to be made inspections of such hospitals at least once a year.

In cities which have in force a comprehensive building code, the provisions of which are determined by the state fire marshal to be equal to the minimum standards of the state fire marshal's code for hospitals, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the state fire marshal or his deputy and they shall jointly approve the premises before a full license can be issued. [1955 c 267 § 8.]

State fire marshal: Chapter 48.48 RCW.

70.41.090 Hospital license required. After January 1, 1956, no person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, shall establish, maintain, or conduct a hospital in this state, or use the word "hospital" to describe or identify an institution, without a license under this chapter: *Provided*, That the provisions of this section shall not apply to state mental institutions and psychiatric hospitals which come within the scope of chapter 71.12 RCW. [1955 c 267 § 9.]

70.41.100 Applications for licenses and renewals—Fees. An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires which may include affirmative evidence of ability to comply with the standards, rules and regulations as are lawfully prescribed hereunder. An application for renewal of license shall be made to the department upon forms provided by it and submitted thirty days prior to the date of expiration of the license. Each application for a license or renewal thereof by a hospital as defined by this chapter shall be accompanied by an annual fee based on the number of beds in said hospital, excluding bassinets for the newborn, as follows: Less than fifty beds, twenty dollars; fifty beds or more, but less than one hundred twenty-five, thirty-five dollars; one hundred twenty five beds or more, fifty dollars: *Provided*, That no fee shall be required of government operated institutions. [1955 c 267 § 10.]

70.41.110 Licenses, provisional licenses—Issuance, duration, assignment, posting. Upon receipt of an application for license and the license fee, the department shall issue a license or a provisional license if the applicant and the hospital facilities meet the requirements of this chapter and the standards, rules and regulations established by the board. All licenses issued under the provisions of this chapter shall expire on a date to be set by the board, but no license issued pursuant to this chapter shall exceed twelve months in duration: *Provided*, That when the annual license renewal date of a previously licensed hospital is set by the board on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee

shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

If there be a failure to comply with the provisions of this chapter or the standards, rules and regulations promulgated pursuant thereto, the department may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the hospital for a period to be determined by the department, but shall not exceed twelve months, unless approved by the board. [1971 ex.s. c 247 § 3; 1955 c 267 § 11.]

70.41.120 Inspection of hospitals—Alterations or additions, new facilities. The department shall make or cause to be made at least yearly an inspection of all hospitals. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder. Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, comply with the regulations prescribed by the board.

No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals. [1955 c 267 § 12.]

70.41.130 Denial, suspension, revocation of license—Hearings. The department is authorized to deny, suspend, or revoke a license or provisional license in the manner prescribed herein in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards, rules and regulations established hereunder. The department shall issue an order to the applicant or licensee giving notice of any rejection, revocation, or suspension, which order shall become final thirty days after the date of mailing: *Provided*, That the applicant or licensee does not within thirty days from the date of mailing of the department's order or rejection, revocation, or suspension of license, make written application to the board for a hearing upon receipt of which the board shall fix a time for such hearing and shall give the applicant or licensee a notice of the time fixed therefor. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the board. The board shall render its decision affirming, modifying, or setting aside the order of the department which decision in the absence of an appeal therefrom as provided by

this chapter, shall become final thirty days after the date of mailing. [1955 c 267 § 13.]

70.41.140 Denial, suspension, revocation of license—Appeals. Within thirty days after the date of mailing of the decision of the board, the interested applicant or licensee may appeal to the superior court of the county of Thurston and such appeal shall be heard as a case in equity, but upon such appeal only such issues of law may be raised as were properly included in the hearing before the board. Proceedings of every such appeal shall be informal and summary, but full opportunity to be heard upon the issues of law shall be had before judgment is pronounced. Such appeal shall be perfected by serving a notice of appeal on the chairman of the board by personal service, or by mailing a copy thereof to the board and by filing the notice of appeal, together with proof of service thereof, with the clerk of the court. The service and the filing, together with proof of the notice of appeal, all within thirty days shall be jurisdictional. The board shall within ten days after receipt of such notice of appeal serve and file a notice of appearance upon appellant or his attorney of record and such appeal shall thereupon be deemed at issue. The board shall serve upon the appellant and file with the clerk of the court before hearing, a certified copy of the complete record of the administrative proceedings which shall, upon being so filed, become the record in such case. [1955 c 267 § 14.]

70.41.150 Denial, suspension, revocation of license—Disclosure of information. Information received by the board or the department through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure. Such records of the department shall at all times be available to the council and the members thereof. [1955 c 267 § 15.]

70.41.160 Remedies available to department—Duty of attorney general. Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department and the board in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a hospital without a license under this law. [1955 c 267 § 16.]

70.41.170 Operating or maintaining unlicensed hospital—Penalty. Any person operating or maintaining a hospital without a license under this chapter shall be guilty of a misdemeanor, and each day of operation of an unlicensed hospital shall constitute a separate offense. [1955 c 267 § 17.]

70.41.180 Physicians' services. Nothing contained in this chapter shall in any way authorize the board to establish standards, rules and regulations governing the

professional services rendered by any physician. [1955 c 267 § 18.]

70.41.190 Retention and preservation of records of patients. Unless specified otherwise by the board, a hospital shall retain and preserve all medical records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a hospital ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The board shall by regulation define the type of records and the information required to be included in the medical records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW. [1975 1st ex.s. c 175 § 1.]

70.41.900 Severability—1955 c 267. If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part can then be administered for the purpose of establishing and maintaining standards for hospitals. [1955 c 267 § 21.]

Chapter 70.44

PUBLIC HOSPITAL DISTRICTS

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County hospitals: Chapter 36.62 RCW.

Hospital's lien: Chapter 60.44 RCW.

Limitation of indebtedness prescribed: RCW 39.36.020.

Rendering emergency care, immunity from civil liability: RCW 18.71.220.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

70.44.005 Purpose. The purpose of this chapter is to authorize the establishment of public hospital districts to own and operate hospitals, nursing homes, extended care, outpatient, and rehabilitative facilities, contiguous with or within such facilities or hospitals, and ambulances, and to supply hospital, nursing home, extended care, outpatient, rehabilitative, health maintenance, and ambulance service for the residents of such districts and other persons. [1979 1st ex.s. c 155 § 2; 1979 1st ex.s. c 143 § 2; 1974 ex.s. c 165 § 1; 1945 c 264 § 1; Rem. Supp. 1945 § 6090–30. Formerly RCW 70.44.010, part.]

Severability—1979 1st ex.s. c 155: See note following RCW 70.44.060.

Severability—1979 1st ex.s. c 143: See note following RCW 70.44.200.

70.44.007 Definitions. As used in this chapter, the following words shall have the following meanings:

(1) The words "other health care facilities" shall mean nursing home, extended care, long-term care, outpatient, and rehabilitative facilities.

(2) The words "other health care services" shall mean nursing home, extended care, long-term care, outpatient, rehabilitative, health maintenance, and ambulance services. [1974 ex.s. c 165 § 5.]

70.44.010 Districts authorized. Municipal corporations, to be known as public hospital districts, are hereby authorized and may be established within the several counties of the state as hereinafter provided. [1947 c 225 § 1; 1945 c 264 § 2; Rem. Supp. 1947 § 6090-31. FORMER PART OF SECTION: 1945 c 264 § 1 now codified as RCW 70.44.005.]

70.44.015 Validation of existing districts. Each and all of the respective areas of land heretofore attempted to be organized into public hospital districts under the provisions of this chapter are validated and declared to be duly existing hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question, and by the files of such districts. [1955 c 135 § 2.]

70.44.020 Resolution—Petition for county-wide district—Conduct of elections. At any general election or at any special election which may be called for that purpose the board of county commissioners of a county may, or on petition of ten percent of the electors of the county based on the total vote cast in the last general county election, shall, by resolution, submit to the voters of the county the proposition of creating a public hospital district coextensive with the limits of the county. The petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereon and certify to the sufficiency thereof, and for that purpose he shall have access to all registration books in the possession of election officers in the county. If the petition is found to be insufficient, it shall be returned to the persons filing it, who may amend or add names thereto for ten days, when it shall be returned to the auditor, who shall have an additional fifteen days to examine it and attach his certificate thereto. No person signing the petition may withdraw his name therefrom after filing. When the petition is certified as sufficient, the auditor shall forthwith transmit it, together with his certificate of sufficiency attached thereto, to the commissioners, who shall immediately transmit the proposition to the supervisor of elections or other election officer of the county, and he shall submit the proposition to the voters at the next general election or if such petition so requests, he shall call a special election on such proposition not less than thirty nor more than ninety days from the date of said certificate. The notice of the election shall state the boundaries of the proposed district and the object of the election, and shall in other respects conform to the requirements of law governing the time and manner of holding elections. In submitting the question to the voters, the proposition shall be expressed on the ballot substantially in the following terms:

For public hospital district No.

Against public hospital district No.

[1955 c 135 § 1; 1945 c 264 § 3; Rem. Supp. 1945 § 6090-32.]

70.44.025 Creation of district—Special election. After this act [1945 c 264] becomes effective a special election may be called at any time by the election board

prior to the next general election, to create such hospital districts where the petition for the creation of such districts so provide or were ordered by the county commissioners. [1945 c 264 § 20; Rem. Supp. 1945 § 6090-49.]

70.44.030 Petition for lesser district—Procedure. Any petition for the formation of a public hospital district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed containing not less than ten percent of the voters of the proposed district who voted at the last general election, certified by the auditor in like manner as for a county-wide district, the board of county commissioners shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when such petition will be heard. Such publications required by this chapter shall be in a newspaper published in the proposed or established public hospital district, or, if there be no such newspaper, then in a newspaper published in the county in which such district is situated, and of general circulation in such county. The hearing on such petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners shall find that any lands have been unjustly or improperly included within the proposed public hospital district the said board shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public hospital district: *Provided*, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of such lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public hospital district including an entire county, except that the petition and election shall be confined solely to the lesser public hospital district. [1945 c 264 § 4; Rem. Supp. 1945 § 6090-33.]

70.44.035 Petition for district lying in more than one county—Procedure. Any petition for the formation of a public hospital district may describe an area lying in more than one county, the boundaries of which shall follow the then existing precinct boundaries and not divide a voting precinct; and if a petition is filed with the county auditor of the respective counties in which a portion of the proposed district is located, containing not less than ten percent of the voters of that area of each county of the proposed district who voted at the last general election, certified by the said respective auditors in like manner as for a county-wide district, the board of county commissioners of each of the counties in which a portion of the proposed district is located shall fix a date for a hearing on the petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the hearing, together with a notice

stating the time of the meeting when the petition will be heard. The publication required by this chapter shall be in a newspaper published in the portion of each county lying within the proposed district, or if there be no such newspaper published in any such portion of a county, then in one published in the county wherein such portion of said district is situated, and of general circulation in the county. The hearing before the respective county commissioners may be adjourned from time to time not exceeding four weeks in all. If upon the final hearing the respective boards of county commissioners find that any land has been unjustly or improperly included within the proposed district they may change and fix the boundary lines of the portion of said district located within their respective counties in such manner as they deem reasonable and just and conducive to the welfare and convenience, and enter an order establishing and defining the boundary lines of the proposed district located within their respective counties: *Provided*, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of the land to be so included. Thereafter the same procedure shall be followed as prescribed for the formation of a district including an entire county, except that the petition and election shall be confined solely to the portions of each county lying within the proposed district. [1953 c 267 § 1.]

70.44.040 Elections—Vacancies—Procedure—Boundaries—Consolidations—Terms of commissioners. The provisions of Title 54 RCW relating to elections and procedure of the commission and boundaries and consolidation of public utility districts shall govern public hospital districts, except that: (1) Vacancies in hospital commissions shall be governed by chapter 70.44 RCW as now or hereafter amended; (2) elections in hospital districts shall be in odd-numbered years as provided in RCW 29.13.020; (3) the total vote cast upon the proposition to form a hospital district shall exceed forty percent of the total number of votes cast in the precincts comprising the proposed district at the preceding general and county election; and (4) hospital district commissioners shall hold office for the term of six years and until their successors are elected and qualified, each term to commence on the first day in January following the election. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three commissioners shall be elected to hold office, respectively, for the terms of two, four, and six years. All candidates shall be voted upon by the entire district, and the candidate residing in commissioner district No. 1 receiving the highest number of votes in the hospital district shall hold office for the term of six years; the candidate residing in commissioner district No. 2 receiving the highest number of votes in the hospital district shall hold office for the term of four years; and the candidate residing in commissioner district No. 3 receiving the highest number of votes in the hospital district shall hold office for the term of two years. The first commissioners to be elected shall take office immediately when qualified in accordance with RCW 29.01.135. Each term of the initial commissioners

shall date from the time above specified following the organizational election, but shall also include the period intervening between the organizational election and the first day of January following the next district general election: *Provided*, That in public hospital districts encompassing portions of more than one county, the total vote cast upon the proposition to form the district shall exceed forty percent of the total number of votes cast in each portion of each county lying within the proposed district at the next preceding general county election. The portion of said proposed district located within each county shall constitute a separate commissioner district. There shall be three district commissioners whose terms shall be six years. Each district shall be designated by the name of the county in which it is located. All candidates for commissioners shall be voted upon by the entire district. Not more than one commissioner shall reside in any one district: *Provided further*, That in the event there are only two districts then two commissioners may reside in one district. The term of each commissioner shall commence on the first day in January in each year following his election. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three commissioners shall be elected to hold office, respectively, for the terms of two, four, and six years. The candidate receiving the highest number of votes within the district, as constituted by said election, shall serve a term of six years; the candidate receiving the next highest number of votes shall hold office for a term of four years; and the candidate receiving the next highest number of votes shall hold office for a term of two years: *Provided further*, That the holding of each such term of office shall be subject to the residential requirements for district commissioners hereinbefore set forth in this section. [1979 1st ex.s. c 126 § 41; 1957 c 11 § 1; 1955 c 82 § 1; 1953 c 267 § 2; 1947 c 229 § 1; 1945 c 264 § 5; Rem. Supp. 1947 § 6090-34.]

Purpose—1979 1st ex.s. c 126: See RCW 29.04.170(1).

70.44.042 Commissioner districts may be abolished—Residence of candidates for positions. Notwithstanding any provision in RCW 70.44.040 to the contrary, any board of public hospital district commissioners may, by resolution, abolish commissioner districts and permit candidates for any position on the board to reside anywhere in the public hospital district. [1967 c 227 § 2.]

70.44.045 Commissioners—Vacancies. A vacancy in the office of commissioner shall occur by death, resignation, removal, conviction of felony, nonattendance at meetings of the commission for sixty days, unless excused by the commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. A vacancy shall be filled at the next general election; the vacancy in the interim to be filled by appointment by the remaining commissioners within twenty days from the date of such vacancy, or in the event the remaining commissioners do not fill the vacancy within said time then the county commissioners of the county in which said district is located shall fill

said vacancy within twenty days thereafter. If more than one vacancy exists at the same time a special election shall be called by the county election supervisor upon the request of any remaining commissioner and if there is none, then by the supervisor. The election shall be held not more than forty days after the occurrence of the vacancies. [1955 c 82 § 2.]

70.44.050 Commissioners—Compensation—Expenses—Insurance—Resolutions by majority vote—Officers—Rules—Seal—Records. A district may provide by resolution for the payment of compensation to each of its commissioners at a rate not exceeding twenty-five dollars for each day or major part thereof devoted to the business of the district, and days upon which he attends meetings of the commission of his own district, or meetings attended by one or more commissioners of two or more districts called to consider business common to them, except that the total compensation paid to such commissioner during any one year shall not exceed one thousand two hundred dollars: *Provided*, That commissioners may not be compensated for services performed of a ministerial or professional nature. Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioners with the same coverage. Each commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his subsistence and lodging and travel while away from his place of residence. No resolution shall be adopted without a majority vote of the whole commission. The commission shall organize by election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records. [1975 c 42 § 1; 1965 c 157 § 1; 1945 c 264 § 15; Rem. Supp. 1945 § 6090-44.]

70.44.051 Increase in number of commissioners—Authorized. In addition to the procedures enumerated in RCW 70.44.020, 70.44.030 and 70.44.035, the board of public hospital district commissioners in an existing intracounty or intercounty district may be increased to five or to seven members; and any district created after June 8, 1967 may have three, five or seven commissioners. [1967 c 77 § 1.]

70.44.053 Increase in number of commissioners—Proposition to be submitted to voters. At any general or special election which may be called for that purpose the board of public hospital district commissioners may, or on petition of ten percent of the electors based on the total vote cast in the last general election in the district shall, by resolution, submit to the voters of the district the proposition increasing the number of commissioners to any number authorized in RCW 70.44.051. [1967 c 77 § 2.]

70.44.055 Increase in number of commissioners—Number to be elected from commissioner districts, at large positions. (1) (a) In intracounty districts having five commissioners, one shall be elected from each commissioner district as provided in RCW 70.44.040, and two shall be elected at large from the hospital district by positions No. 4 and No. 5.

(b) In intercounty districts having five commissioners, two shall be elected from each commissioner district by positions No. 1 and No. 2, and one shall be elected at large from the hospital district.

(2) (a) In intracounty districts having seven commissioners, two shall be elected from each commissioner district by positions No. 1 and No. 2, and one shall be elected at large from the entire hospital district.

(b) In intercounty districts having seven commissioners, three shall be elected from each commissioner district by positions No. 1, No. 2 and No. 3, and one shall be elected at large from the entire hospital district. [1967 c 77 § 3.]

70.44.057 Increase in number of commissioners—Staggering terms of additional commissioners in existing districts—New districts. (1) In all existing public hospital districts in which an increase in membership of the board of hospital district commissioners is proposed, the district commissioners shall, by resolution adopted in advance of any elections therefor, provide for the staggering of terms of the additional commissioner positions so that, as nearly as is mathematically possible, one-third of the expanded board shall be elected every two years.

(2) When a new district is proposed with more than three commissioners, the county commissioners of the counties affected shall adopt the resolution prescribed in subsection (1) of this section. [1967 c 77 § 4.]

70.44.060 Powers and duties. All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: *Provided*, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility: *And provided, further*, That no hospital district organized and existing in districts having more than twenty—

five thousand population have any of the rights herein enumerated without the prior written consent of all existing hospital facilities within the boundaries of such hospital district.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: *Provided*, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2).

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue (a) revenue bonds or warrants therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds or warrants to be issued in the same manner and subject to the same provisions as provided for the issuance of revenue bonds or warrants by cities or towns under the Municipal Revenue Bond Act, chapter 35.41 RCW, as may hereafter be amended or (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 to 70.44.130, inclusive, as may hereafter be amended; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed seventy-five cents per thousand dollars of

assessed value or such further amount as has been or shall be authorized by a vote of the people: *Provided further*, That the public hospital districts are hereby authorized to levy such a general tax in excess of said seventy-five cents per thousand dollars of assessed value when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is hereby authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition to levy a tax in excess of the seventy-five cents per thousand dollars of assessed value herein specifically authorized. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first Monday in September. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks in a newspaper printed and of general circulation in said county. On the first Monday in October the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To mortgage land owned by the district, together with any improvements located thereon, for the purpose of constructing hospital or other health care facilities. The issuance of a mortgage and note under this subsection shall not be subject to the applicable limitations and requirements provided in RCW 39.36.020 as now or hereafter amended: *Provided*, That such mortgage and note shall be authorized by an affirmative vote of the voters of said district voting at a general election or an election held for that purpose.

(8) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(9) To sue and be sued in any court of competent jurisdiction: *Provided*, That all suits against the public

hospital district shall be brought in the county in which the public hospital district is located.

(10) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(11) To make contracts, employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make contracts with private or public institutions for employee retirement programs; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter. [1979 1st ex.s. c 155 § 1; 1979 1st ex.s. c 143 § 4; 1977 ex.s. c 211 § 1; 1974 ex.s. c 165 § 2; 1973 1st ex.s. c 195 § 83; 1971 ex.s. c 218 § 2; 1970 ex.s. c 56 § 85; 1969 ex.s. c 65 § 1; 1967 c 164 § 7; 1965 c 157 § 2; 1949 c 197 § 18; 1945 c 264 § 6; Rem. Supp. 1949 § 6090-35.]

Severability—1979 1st ex.s. c 155: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 1st ex.s. c 155 § 3.]

Severability—1979 1st ex.s. c 143: See note following RCW 70.44.200.

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

Purpose—1970 ex.s. c 56: See note following RCW 39.44.030.

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

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

Eminent domain by cities: Chapter 8.12 RCW.

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59); RCW 84.52.050.

Port districts, collection of taxes: RCW 53.36.020.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

70.44.061 Powers and duties—Sales and leases of surplus property. The board of commissioners of any public hospital district may lease out or may sell and convey at public or private sale, surplus property of the district if the board has determined by resolution adopted by unanimous vote of all members of the board that such property is not and will not be needed for the district's purposes, nor for operation of its public hospitals: *Provided*, That in leasing or selling real estate the board shall have obtained not more than one year prior to date of sale a written appraisal of the value of such real estate by at least two disinterested appraisers concurring in and signing the appraisal, who must be licensed under the laws of this state as real estate appraisers or as real estate brokers, and that the board shall have published a call for bids upon such real estate once a week for two successive weeks in a legal newspaper of general circulation in the districts, and that the

sale price received be not less than ninety percent of such appraised value of the real estate sold: *Provided further*, That if such appraised value of property proposed to be sold is more than one hundred thousand dollars then before making any sale thereof the question of making a sale of the property shall be submitted to the voters of the district at a general or special election and be determined by majority vote therein. In the event of a sale, not less than one-tenth of the total purchase price shall be paid on the date of execution of the contract for sale, and one-tenth shall be paid annually thereafter until the full purchase price has been paid, but any purchaser may make full payment at any time. All unpaid deferred payments shall draw interest at a rate not less than six percent per annum; or in the alternative, such sale may be effected on such terms and conditions as may be determined by resolution of the board of commissioners: *Provided*, That such sale is approved and confirmed by decree of the superior court in the county where such property is located, after publication of notice of hearing is given as fixed and directed by such court. [1970 ex.s. c 7 § 1; 1963 c 102 § 1.]

70.44.065 Levy for emergency medical care and services. See RCW 84.52.069.

70.44.070 Superintendent—Appointment—Removal—Salary. The public hospital district commission shall appoint a superintendent, who shall be appointed for an indefinite time and be removable at the will of the commission. Appointments and removals shall be by resolution, introduced at a regular meeting and adopted at a subsequent regular meeting by a majority vote. He shall receive such salary as the commission shall fix by resolution. [1945 c 264 § 7; Rem. Supp. 1945 § 6090-36.]

70.44.080 Superintendent—Powers. The superintendent shall be the chief administrative officer of the public district hospital and shall have control of administrative functions of said hospital. He shall be responsible to the commission for the efficient administration of all affairs of the hospital. In case of the absence or temporary disability of the superintendent a competent person shall be appointed by the commission. The superintendent shall be entitled to attend all meetings of the commission and its committees and to take part in the discussion of any matters pertaining to the duties of his department, but shall have no vote. [1945 c 264 § 9; Rem. Supp. 1945 § 6090-38.]

70.44.090 Superintendent—Duties. The public hospital district superintendent shall have power, and it shall be his duty:

(1) To carry out the orders of the commission, and to see that all the laws of the state pertaining to matters within the functions of his department are duly enforced.

(2) To keep the commission fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal year of the probable expenses of his department, and to recommend to the commission what development work should be

undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the commission all the bills, allowances and payrolls, including claims due contractors of public works. To recommend to the commission salaries of the employees of his office and a scale of salaries or wages to be paid for the different classes of service required by the district. [1945 c 264 § 11; Rem. Supp. 1945 § 6090-40.]

70.44.100 Inspection and approval of plans by state. The Washington state department of social and health services shall be authorized to inspect all premises maintained or operated by any hospital district created hereunder. No district shall construct any building or make any alteration therein without first having obtained the approval of the Washington state board of health as to plans of such construction and the site thereof. [1979 c 141 § 107; 1945 c 264 § 8; Rem. Supp. 1945 § 6090-37.]

70.44.110 Plan to construct or improve—Submission to vote. Whenever the commission deems it advisable that the district acquire or construct a public hospital, or other health care facilities, or make additions or betterments thereto, or extensions thereof, it shall provide therefor by resolution, which shall specify and adopt the plan proposed, and declare the estimated cost thereof, and specify the amount of indebtedness, the amount of interest, and the time in which all bonds shall be paid, not to exceed thirty years. The incurring of such indebtedness shall be subject to the applicable limitations and requirements provided in section 1, chapter 143, Laws of 1917, as last amended by section 4, chapter 107, Laws of 1967, and RCW 39.36.020, as now or hereafter amended. If a proposition to incur any such indebtedness is to be submitted to the electors of the district it may be submitted at any general election or a special election called for that purpose pursuant to the applicable election laws. [1974 ex.s. c 165 § 3; 1969 ex.s. c 65 § 2; 1955 c 56 § 1; 1945 c 264 § 12; Rem. Supp. 1945 § 6090-41.]

70.44.120 Bonds—Form—Terms—Execution. All bonds shall be serial in form and maturity and numbered from one upwards consecutively. The various annual maturities shall commence not later than the tenth year after the date of issue of such bonds. The resolution authorizing the issuance of the bonds shall fix the rate of interest the bonds shall bear and the place and dates of the payment of both principal and interest. The bonds shall be signed by the president of the commission, attested by the secretary of the commission, and the seal of the public hospital district shall be affixed to each bond but not to the coupons: *Provided, however,* That said coupons, in lieu of being so signed, may have printed thereon a facsimile of the signatures of such officers. [1970 ex.s. c 56 § 86; 1969 ex.s. c 65 § 3; 1945 c 264 § 13; Rem. Supp. 1945 § 6090-42.]

Purpose—1970 ex.s. c 56: See note following RCW 39.44.030.

70.44.130 Bonds—Payment—Security for deposits. The principal and interest of such general bonds shall be paid by levying each year a tax upon the taxable property within the district sufficient, together with other revenues of the district available for such purpose, to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. Said bonds shall be sold in such manner as the commission shall deem for the best interests of the district. All bonds and warrants issued under the authority of this chapter shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys. [1971 ex.s. c 218 § 3; 1945 c 264 § 14; Rem. Supp. 1945 § 6090-43.]

70.44.140 Contracts for material and work—Call for bids. All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall cause to be published a notice at least thirty days before the letting of said contract, inviting sealed proposals for such work, plans and specifications which must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: *Provided, however,* That the commission may at the same time, and as part of the same notice, invite tenders for said work or materials upon plans and specifications to be submitted by bidders. Such notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his own plans and specifications: *Provided, however,* That no contract shall be let in excess of the estimated cost of said materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders; but if such contract be let, then and in such case all bid proposal security shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at

which he is notified that he is the successful bidder, the said bid proposal security and the amount thereof shall be forfeited to the public hospital district. [1965 c 83 § 1; 1945 c 264 § 17; Rem. Supp. 1945 § 6090-46.]

Contractor's bond: Chapter 39.08 RCW.

Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.

70.44.150 Minimum wage scale on construction. Every contractor and subcontractor performing any work for said public hospital districts within said public hospital district shall pay or cause to be paid to its employees on such work or under such contract or subtract not less than the minimum scale fixed by the resolution of the commission prior to the notice and call for bids on such work. The commission in fixing [the] scale of wages shall fix the same as nearly as possible to the current prevailing and going wages within the district for work of like character. [1945 c 264 § 18; Rem. Supp. 1945 § 6090-47.]

Prevailing wages on public works: Chapter 39.12 RCW.

70.44.160 Medical management of patients—Hospital standards. The medical management of patients shall be subject to the approval of the medical staff. All hospitals operated by a district shall be operated in compliance with the standards set by the American Hospital Association. [1965 c 157 § 3; 1945 c 264 § 10; Rem. Supp. 1945 § 6090-39.]

70.44.171 Treasurer—Duties—Funds—Depositaries—Surety bonds, cost. The treasurer of the county in which a public hospital district is located shall be treasurer of the district, except that the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the district. If the treasurer is not the county treasurer, the commission shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

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

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries. If the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in RCW 36.48.020 for deposit of

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

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

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district. The district may pay the premium on such bond. [1967 c 227 § 1.]

70.44.185 Change of district boundary lines to allow farm units to be wholly within one hospital district—Notice. Notwithstanding any other provision of law, including RCW 70.44.040, whenever the boundary line between contiguous hospital districts bisects an irrigation block unit placing part of the unit in one hospital district and the balance thereof in another such district, the county auditor, upon his approval of a request therefor after public hearing thereon, shall change the hospital district boundary lines so that the entire farm unit of the person so requesting shall be wholly in one of such hospital districts and give notice thereof to those hospital district and county officials as he shall deem appropriate therefor. [1971 ex.s. c 218 § 4.]

70.44.190 Consolidation of districts. Two or more contiguous hospital districts, whether the territory therein lies in one or more counties, may consolidate by following the procedure outlined in chapter 35.10 RCW with reference to consolidation of cities and towns. [1953 c 267 § 3.]

70.44.200 Annexation of territory. (1) A public hospital district may annex territory outside the existing boundaries of such district and contiguous thereto, whether the territory lies in one or more counties, in accordance with this section.

(2) A petition for annexation of territory contiguous to a public hospital district may be filed with the commission of the district to which annexation is proposed. The petition must be signed by the owners, as prescribed by RCW 35A.01.040(9) (a) through (e), of not less than sixty percent of the area of land within the territory proposed to be annexed. Such petition shall describe the boundaries of the territory proposed to be annexed and shall be accompanied by a map which outlines the boundaries of such territory.

(3) Whenever such a petition for annexation is filed with the commission of a public hospital district, the commission may entertain the same, fix a date for public hearing thereon, and cause notice of the hearing to be published once a week for at least two consecutive weeks in a newspaper of general circulation within the territory proposed to be annexed. The notice shall also be posted in three public places within the territory proposed to be annexed, shall contain a description of the boundaries of such territory, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation.

(4) Following the hearing, if the commission of the district determines to accomplish the annexation, it shall do so by resolution. The resolution may annex all or any portion of the proposed territory but may not include in the annexation any property not described in the petition. Upon passage of the annexation resolution, the territory annexed shall become part of the district and a certified copy of such resolution shall be filed with the legislative authority of the county or counties in which the annexed property is located.

(5) If the petition for annexation and the annexation resolution so provide, as the commission may require, and such petition has been signed by the owners of all the land within the boundaries of the territory being annexed, the annexed property shall assume and be assessed and taxed to pay for all or any portion of the outstanding indebtedness of the district to which it is annexed at the same rates as other property within such district. Unless so provided in the petition and resolution, property within the boundaries of the territory annexed shall not be assessed or taxed to pay for all or any portion of the indebtedness of the district to which it is annexed that was contracted prior to or which existed at the date of annexation. In no event shall any such annexed property be released from any assessments or taxes previously levied against it or from its existing liability for the payment of outstanding bonds or warrants issued prior to such annexation.

(6) The annexation procedure provided for in RCW 70.44.200 shall be an alternative method applicable only when at the time a petition is filed pursuant to RCW 70.44.200 there are no qualified electors residing in the territory to be annexed. [1979 1st ex.s. c 143 § 1; 1953 c 267 § 4.]

Severability—1979 1st ex.s. c 143: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 1st ex.s. c 143 § 3.]

70.44.210 Alternate method of annexation—Contents of resolution calling for election. As an alternate method of annexation to public hospital districts, any territory adjacent to a public hospital district may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in RCW 70.44.210 through 70.44.230. An election to annex such territory may be called pursuant to a resolution calling for such an election adopted by the district commissioners.

Any resolution calling for such an election shall describe the boundaries of the territory to be annexed, state that the annexation of such territory to the public hospital district will be conducive to the welfare and benefit of the persons or property within the district and within the territory proposed to be annexed, and fix the date, time and place for a public hearing thereon which date shall be not more than sixty nor less than forty days following the adoption of such resolution. [1967 c 227 § 6.]

70.44.220 Alternate method of annexation—Publication and contents of notice of hearing—Hearing—Resolution—Special election. Notice of such hearing shall be published once a week for at least two consecutive weeks in one or more newspapers of general circulation within the territory proposed to be annexed. The notice shall contain a description of the boundaries of the territory proposed to be annexed and shall state the time and place of the hearing thereon and the fact that any changes in the boundaries of such territory will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the proposed annexation. The district commissioners may make such changes in the boundaries of the territory proposed to be annexed as it shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands. If the district commissioners shall determine that any additional territory should be included in the territory to be annexed, a second hearing shall be held and notice given in the same manner as for the original hearing. The district commissioners may adjourn the hearing on the proposed annexation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing, the district commissioners shall, if it finds that the annexation of such territory will be conducive to the welfare and benefit of the persons and property therein and the welfare and benefit of the persons and property within the public hospital district, adopt a resolution fixing the boundaries of the territory to be annexed and causing to be called a special election on such annexation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1967 c 227 § 7.]

70.44.230 Alternate method of annexation—Conduct and canvass of election—Notice—Ballot. An election on the annexation of territory to a public hospital district shall be conducted and canvassed in the same manner as provided for the conduct of an election on the formation of a public hospital district except that notice of such election shall be published in one or more newspapers of general circulation in the territory proposed to be annexed and the ballot proposition shall be in substantially the following form:

ANNEXATION TO (herein insert name of public hospital district)

"Shall the territory described in a resolution of the public hospital district commissioners of (here insert name of public hospital district) adopted on -----, -----, 19--, be annexed to such district?

YES
NO

If a majority of those voting on such proposition vote in favor thereof, the territory shall thereupon be annexed to the public hospital district. [1967 c 227 § 8.]

70.44.240 Contracting or joining with other districts, hospitals, corporations or individuals to jointly provide

services or facilities. Any public hospital district may contract or join with any other public hospital district, any publicly owned hospital, any nonprofit hospital, any corporation, or individual to provide such individuals, hospital districts, and hospitals with services or facilities to be used by such individuals, districts, and hospitals, including the providing of health maintenance services. [1974 ex.s. c 165 § 4; 1967 c 227 § 3.]

70.44.250 Lease of real or personal property—Conditions of lease—Performance bond—Surety. A public hospital district may lease out real or personal property which it owns or in which it has an interest and which is not immediately necessary for its purposes upon such terms as the board of hospital commissioners deem proper.

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

The commissioners may accept as surety on any bond required by this section, either an approved surety company or one or more persons satisfactory to the commissioners, or in lieu of such bond may accept a deposit as security of such property or collateral or the giving of such other form of security as may be satisfactory to the commissioners. [1967 c 227 § 4.]

70.44.260 Contracts for purchase of real or personal property. Any public hospital district may execute an executory conditional sales contract with any other municipal corporation, the state, or any of its political subdivisions, the government of the United States, or any private party for the purchase of any real or personal property, or property rights, in connection with the exercise of any powers or duties which such districts now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of the limitation imposed by RCW 39.36.020, as now or hereafter amended, to be incurred without the assent of the

voters of the district: *Provided*, That if such a proposed contract would result in a total indebtedness in excess of three-fourths of one percent of the value of taxable property in such public hospital district, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. The term "value of taxable property" shall have the meaning set forth in RCW 39.36.015. [1975-'76 2nd ex.s. c 78 § 1.]

70.44.900 Severability—Construction—1945 c 264. Adjudication of invalidity of any section, clause or part of a section of this act [1945 c 264] shall not impair or otherwise affect the validity of the act as a whole or any other part thereof. The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended. When this act comes in conflict with any provisions, limitation or restriction in any other law, this act shall govern and control. [1945 c 264 § 21; no RRS.]

70.44.901 Severability—Construction—1974 ex.s. c 165. If any section, clause, or other provision of this 1974 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of such 1974 amendatory act, or the application of such section, clause, or provision to other persons or circumstances, shall not be affected. The rule of strict construction shall have no application to this 1974 amendatory act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this 1974 amendatory act is intended. When this 1974 amendatory act comes in conflict with any provision, limitation, or restriction in any other law, this 1974 amendatory act shall govern and control. [1974 ex.s. c 165 § 6.]

70.44.910 Construction—1945 c 264. This act [1945 c 264 § 22] shall not be deemed or construed to repeal or affect any existing act, or any part thereof, relating to the construction, operation and maintenance of public hospitals, but shall be supplemental thereto and concurrent therewith. [1945 c 264 § 22; no RRS.]

Chapter 70.46

HEALTH DISTRICTS

Sections	
70.46.020	Districts of two or more counties—Health board—Membership—Chairman.
70.46.030	Districts of one county—Board of health—Membership—Chairman.
70.46.040	Inclusion of a city over 100,000 population.
70.46.050	Representation on the district health board.
70.46.060	District health board—Powers and duties.
70.46.080	Treasurer—District funds—Contributions by counties and cities.
70.46.085	Expenses of providing public health services—Payment by counties and cities—Procedure on failure to pay.
70.46.090	Withdrawal of county or city.

- 70.46.100 Power to acquire, maintain, or dispose of property—Contracts.
- 70.46.110 Disincorporation of district located in class A or AA county and inactive for five years.
- 70.46.120 License or permit fees.
- 70.46.130 Contracts for sale or purchase of health services authorized.

Local health departments, provisions relating to health districts: Chapter 70.05 RCW.

70.46.020 Districts of two or more counties—Health board—Membership—Chairman. Health districts consisting of two or more counties may be created whenever two or more boards of county commissioners shall by resolution establish a district for such purpose. Such a district shall consist of all the area of the combined counties including all cities and towns except cities of over one hundred thousand population. The district board of health of such a district shall consist of not less than seven members, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners of each county within the district. The remaining members shall be representatives of the cities and towns in the district selected by mutual agreement of the legislative bodies of the cities and towns concerned from their membership, taking into consideration the financial contribution of such cities and towns and representation from the several classifications of cities and towns.

At the first meeting of a district board of health the members shall elect a chairman to serve for a period of one year. [1967 ex.s. c 51 § 6; 1945 c 183 § 2; Rem. Supp. 1945 § 6099–11.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.030 Districts of one county—Board of health—Membership—Chairman. A health district to consist of one county only and including all cities and towns therein except cities having a population of over one hundred thousand may be created whenever the board of county commissioners of the county shall pass a resolution to organize such a health district under chapter 70.05 RCW and RCW 70.46.020 through 70.46.090. The district board of health of such district shall consist of not less than five members, including the three members of the board of county commissioners of the county: *Provided*, That if such health district consists of a county of the second class, the district board of health shall consist of not less than six members, including the three members of the board of county commissioners of the county and one person who is a qualified voter of an unincorporated rural area of the county and who is appointed by the legislative authority of the county. The remaining members shall be representatives of the cities and towns in the district selected by mutual agreement of the legislative bodies of the cities and towns concerned from their membership, taking into consideration the respective populations and financial contributions of such cities and towns.

At the first meeting of a district board of health, the members shall elect a chairman to serve for a period of

one year. [1969 ex.s. c 70 § 1; 1967 ex.s. c 51 § 5; 1945 c 183 § 3; Rem. Supp. 1945 § 6099–12.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.040 Inclusion of a city over 100,000 population. Whenever a city of over one hundred thousand population desires to be included in a health district and shall through its legislative authority petition the district board of health to be included and the district board of health and the city legislative authority agree as to the functions to be performed for the city by the health district and the amount of financial contributions to be made by the city to the health district such city shall be included in the health district. [1967 ex.s. c 51 § 7; 1945 c 183 § 4; Rem. Supp. 1945 § 6099–13.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.050 Representation on the district health board. Whenever a city of over one hundred thousand population is included in a health district it shall have equal representation with the board of county commissioners of the county in which said city is located, the city's representatives to be selected by the legislative body of the city from among its membership. All appointments to the district board of health shall be made within thirty days after the formation of the district. Vacancies on the district board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. Representatives on the district board of the various units of the district shall continue at the pleasure of the legislative body of the unit: *Provided*, That the representation on the local boards of health in existence at the time of the enactment of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 may be continued without change in the discretion of the board. [1967 ex.s. c 51 § 8; 1957 c 100 § 1; 1945 c 183 § 5; Rem. Supp. 1945 § 6099–14.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.060 District health board—Powers and duties. The district board of health shall constitute the local board of health for all the territory included in the health district, and shall supersede and exercise all the powers and perform all the duties by law vested in the county or city or town board of health of any county, city or town included in the health district, except as otherwise in chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 provided. [1967 ex.s. c 51 § 11; 1945 c 183 § 6; Rem. Supp. 1945 § 6099–15.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.080 Treasurer—District funds—Contributions by counties and cities. Each health district shall establish a fund to be designated as the "district health fund", in which shall be placed all sums received by the district from any source, and out of which shall be expended all sums disbursed by the district. The county treasurer of the county in the district embracing only one county; or, in a district composed of more than one county the county treasurer of the county having the largest population shall be the custodian of the fund, and

the county auditor of said county shall keep the record of the receipts and disbursements, and shall draw and the county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the board: *Provided*, That in local health departments wherein a city of over one hundred thousand population is a part of said department, the local board of health may pool the funds available for public health purposes in the office of the city treasurer in a special pooling fund to be established and which shall be expended as set forth above.

Each county, city or town which is included in the district shall contribute such sums towards the expense for maintaining and operating the district as shall be agreed upon between it and the local board of health in accordance with guidelines established by the state board of health after consultation with the Washington state association of counties and the association of Washington cities. In the event that no agreement can be reached between the district board of health and the county, city or town, the matter shall be resolved by a board of arbitrators to consist of a representative of the district board of health, a representative from the county, city or town involved, and a third representative to be appointed by the two representatives, but if they are unable to agree, a representative shall be appointed by a judge in the county in which the city or town is located. The determination of the proportionate share to be paid by a county, city or town shall be binding on all parties. Payments into the fund of the district may be made by the county or city or town members during the first year of membership in said district from any funds of the respective county, city or town as would otherwise be available for expenditures for health facilities and services, and thereafter the members shall include items in their respective budgets for payments to finance the health district. [1971 ex.s. c 85 § 10; 1967 ex.s. c 51 § 19; 1945 c 183 § 8; Rem. Supp. 1945 § 6099–17.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.085 Expenses of providing public health services—Payment by counties and cities—Procedure on failure to pay. The expense of providing public health services shall be borne by each county, city or town within the health district, and the local health officer shall certify the amount agreed upon or as determined pursuant to RCW 70.46.080, and remaining unpaid by each county, city or town to the fiscal or warrant issuing officer of such county, city or town.

If the expense as certified is not paid by any county, city or town within thirty days after the end of the fiscal year, the local health officer shall certify the amount due to the auditor of the county in which the governmental unit is situated who shall promptly issue his warrant on the county treasurer payable out of the current expense fund of the county, which fund shall be reimbursed by the county auditor out of the money due said governmental unit at the next monthly settlement or settlements of the collection of taxes and shall be transferred to the current expense fund. [1967 ex.s. c 51 § 20.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.
Expenses of enforcing health laws and regulations: RCW 70.05.130.

70.46.090 Withdrawal of county or city. Any county or any city or town may withdraw from membership in said health district any time after it has been within the district for a period of two years, but no withdrawal shall be effective except at the end of the calendar year in which the county, city or town gives at least six months' notice of its intention to withdraw at the end of the calendar year. No withdrawal shall entitle any member to a refund of any moneys paid to the district nor relieve it of any obligations to pay to the district all sums for which it obligated itself due and owing by it to the district for the year at the end of which the withdrawal is to be effective: *Provided*, That any county, city or town which withdraws from membership in said health district shall immediately establish a health department or provide health services which shall meet the standards for health services promulgated by the state board of health: *Provided further*, That no local health department shall be deemed to provide adequate public health services unless there is at least one full time professionally trained and qualified physician as set forth in RCW 70.05.050. [1967 ex.s. c 51 § 21; 1945 c 183 § 9; Rem. Supp. 1945 § 6099–18.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.100 Power to acquire, maintain, or dispose of property—Contracts. In addition to all other powers and duties, a health district shall have the power to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the district. A health district may sell, lease, convey or otherwise dispose of any district real or personal property no longer necessary for the conduct of the affairs of the district. A health district may enter into contracts to carry out the provisions of this section. [1957 c 100 § 2.]

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

70.46.120 License or permit fees. In addition to all other powers and duties, health districts shall have the power to charge fees in connection with the issuance or renewal of a license or permit required by law: *Provided*, That the fees charged shall not exceed the actual cost involved in issuing or renewing the license or permit: *Provided further*, That no fees shall be charged pursuant to this section within the corporate limits of any city or town which prior to the enactment of this section charged fees in connection with the issuance or renewal of a license or permit pursuant to city or town ordinance and where said city or town makes a direct contribution to said health district, unless such city or town expressly consents thereto. [1963 c 121 § 1.]

70.46.130 Contracts for sale or purchase of health services authorized. See RCW 70.05.150.

Chapter 70.48

CITY AND COUNTY JAILS ACT

Sections

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70.48.320	Bonds legal investments for public funds.

70.48.010 Legislative declaration. It is the policy of this state that all city and county jails provide a humane and safe environment. It is the purpose of this chapter (1) to require classification of county and city jails on the basis of their purpose and their function in order to provide for (a) the setting of state-wide mandatory custodial care standards that are essential for the health, welfare, and security of persons confined in jails, (b) advisory custodial care minimum standards, and (c) physical plant minimum standards, (2) to aid the Washington state criminal justice training commission in developing and implementing personnel training and

qualification standards, and (3) to provide for a determination of the role of the state and local units of government with regard to the custody of persons who are arrested for and/or convicted of violating statutes or ordinances which define crimes. The legislature also finds that in order to accomplish the purpose of this chapter it is necessary for the state to provide adequate funds to enable units of local government to fully comply with the physical plant minimum standards for detention and correctional facilities. [1977 ex.s. c 316 § 1.]

Severability—1977 ex.s. c 316: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 316 § 26.] This applies to RCW 70.48.010 through 70.48.170 and the 1977 amendments to RCW 35.22.280, 35.23.440, 35.24.160, 35.24.290, 35.27.240, 35.27.370, and 70.48.190.

70.48.020 Definitions. As used in this chapter the words and phrases in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Holding facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days.

(2) "Detention facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(3) "Correctional facility" means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(4) "Jail" means any holding, detention, or correctional facility as defined in this section.

(5) "Health care" means preventive, diagnostic and rehabilitative services provided by licensed health care professionals and/or facilities; such care to include providing prescription drugs where indicated.

(6) "Commission" means the state jail commission created pursuant to RCW 70.48.030.

(7) "Substantially remodeled" means significant alterations made to the physical plant of a jail to conform with the physical plant standards.

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

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

(10) "Governing unit" means the city and/or county or any combinations of cities and/or counties responsible for the operation, supervision, and maintenance of a jail.

(11) "Mandatory custodial care standards" means those minimum standards, rules, or regulations that are adopted pursuant to RCW 70.48.050(1)(a) and

70.48.070(1) for jails to meet federal and state constitutional requirements relating to the health, safety, security, and welfare of inmates.

(12) "Advisory custodial care standards" means custodial care standards recommended by the commission which are not mandatory.

(13) "Physical plant standards" and "physical plant requirements" mean those minimum standards, rules, or regulations that are prescribed by the commission for jails that relate to structural specifications of the physical plant, including but not limited to size of cells and rooms within a jail, design of facilities, and specifications for fixtures and other equipment.

(14) "Jail inspector" means a person with at least five years in a supervisory position as a law enforcement or custodial corrections officer.

(15) "Major urban" means a county or combination of counties which has a city having a population greater than twenty-six thousand based on the 1978 projections of the office of financial management.

(16) "Medium urban" means a county or combination of counties which has a city having a population equal to or greater than ten thousand but less than twenty-six thousand based on the 1978 projections of the office of financial management.

(17) "Rural" means a county or combination of counties which has a city having a population less than ten thousand based on the 1978 projections of the office of financial management. [1979 1st ex.s. c 232 § 11; 1977 ex.s. c 316 § 2.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.030 State jail commission—Created—Composition—Qualifications—Vacancies—Meetings—Termination. A state jail commission shall be appointed to establish standards approved by the legislature for the operation of city and county jails. The commission shall be comprised of fifteen members of which eleven shall be appointed by the governor and confirmed by the state senate: *Provided*, That at least seven of the members shall be elected city, town, or county legislative or executive officials: *Provided further*, That the secretary or the secretary's designee shall be one of the members of the commission.

At least two members of the commission shall represent minorities.

At least four members of the commission shall reside east of the crest of the Cascade Range. Any member of the commission appointed pursuant to this section as an incumbent official shall immediately, upon termination of holding said office, cease to be a member of the commission and the governor shall appoint a replacement. Vacancies shall be filled in the same manner as original appointments: *Provided*, That a person appointed as a replacement shall serve for only the balance of the replaced member's term unless the replacement is reappointed.

Four members shall be legislators who shall be non-voting members of the commission. The president of the senate and the speaker of the house shall each appoint

two members, one from each party. The legislator members' terms shall expire on the first day of the convening of the legislature in each odd-numbered year.

Three of the original appointments shall be for terms of one year, four of the initial appointments shall be for terms of two years, and four of the initial appointments shall be for terms of three years. Subsequent appointments shall be for a three year term except for the legislative members.

The chairperson of the commission shall be appointed by the governor and shall serve as chairperson at the governor's pleasure. A vice-chairperson shall be elected by the commission. The commission shall meet on call of the chairperson or on request of a majority of its members, but not less than four times per year. [1979 1st ex.s. c 232 § 12; 1977 ex.s. c 316 § 3.]

Reviser's note—Sunset Act application: The state jail commission is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.209. RCW 70.48.030 through 70.48.080 are scheduled for future repeal under RCW 43.131.210.

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.040 Commission members—Travel expenses—Reimbursement. Members of the commission shall be entitled to reimbursement for travel expenses incurred in the performance of their duties pursuant to RCW 43.03.050 and 43.03.060. [1977 ex.s. c 316 § 4.]

Sunset Act application: See note following RCW 70.48.030.

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.050 Commission—Powers and duties. In addition to any other powers and duties contained in this chapter, the commission shall have the powers and duties:

(1) To adopt such rules and regulations, after approval by the legislature, pursuant to chapter 34.04 RCW, as it deems necessary and consistent with the purposes and intent of this chapter on the following subjects:

(a) Mandatory custodial care standards that are essential for the health, welfare, and security of persons confined in jails: *Provided*, That in adopting each rule or regulation pertaining to mandatory custodial care standards, the commission shall cite the applicable case law, statutory law or constitutional provision which requires such rule or regulation;

(b) Advisory custodial care standards;

(c) The classification and uses of holding, detention, and correctional facilities. Except for the housing of work releasees in accordance with commission rules, a person may not be held in a holding facility longer than seventy-two hours, exclusive of weekends and holidays, without being transferred to a detention or correctional facility unless the court having jurisdiction over the individual authorizes a longer holding, but in no instance shall the holding exceed thirty days;

(d) The content of jail records which shall be maintained by the department of corrections or the chief law enforcement officer of the governing unit. In addition

the governing unit, chief law enforcement officer, or department of corrections may require such additional records as they deem proper; and

(e) The segregation of persons and classes of persons confined in holding, detention, and correctional facilities;

(2) To investigate, develop, and encourage alternative and innovative methods in all phases of jail operation;

(3) To make comments, reports, and recommendations concerning all phases of jail operation including those not specifically described in this chapter;

(4) To hire necessary staff, acquire office space, supplies, and equipment, and make such other expenditures as may be deemed necessary to carry out its duties;

(5) The secretary shall submit minimum physical plant standards to the commission for review and promulgate proposed standards pursuant to chapter 34.04 RCW. After such promulgation, the standards shall be presented for review at a public conference of city, town, and county legislative and executive officials and directors of departments of correction or the chief law enforcement officers of the governing units in four regional meetings, two of which shall be east of the Cascade range. Subsequent to these reviews, and utilizing the data received, the commission shall adopt minimum physical plant standards pursuant to chapter 34.04 RCW, after approval by the legislature;

(6) To cause all jails to be inspected at least annually by designated jail inspectors and to issue a certificate of compliance to each facility which is found to satisfactorily meet the requirements of this chapter and the rules, regulations, and standards adopted hereunder: *Provided*, That certificates of partial compliance may be issued where applicable. The inspectors shall have access to all portions of jails, to all prisoners confined therein, and to all records maintained by said jails; and

(7) To establish advisory guidelines and model ordinances to assist governing units in establishing the agreements necessary for the joint operation of jails and for the determination of the rates of allowance for the daily costs of holding a prisoner pursuant to the provisions of RCW 70.48.080(6). [1979 1st ex.s. c 232 § 13; 1977 ex.s. c 316 § 5.]

Sunset Act application: See note following RCW 70.48.030.

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.060 Capital construction—Financial assistance—Rules—Oversight—Cost estimates. (1)

Any funds allocated to a governing unit for jail construction or renovation pursuant to this chapter shall constitute full funding of the cost of implementing the physical plant standards within the meaning of RCW 70.48.070(2). Jail construction or renovation represents the full extent of the state's financial commitment with regard to jails. Local governing units are responsible for funding all costs of operating jails.

(2) As a condition of eligibility for such financial assistance as may be provided by or through the state of Washington exclusively for the construction and/or modernization of jails, all jail construction and/or substantial remodeling projects shall be submitted by the governing unit to the commission which shall review all

submitted projects in accordance with rules to be adopted by the commission and shall approve or reject each project for purposes of state funding. The commission shall allocate available funding to the projects approved for funding in accordance with moneys actually available and the priorities established by the commission under this section.

(3) The rules to be adopted by the commission for purposes of approving or denying requests for state funds for jail construction or remodeling shall:

(i) Limit state funding to the minimum amount required to fully implement the physical plant standards;

(ii) Encourage the voluntary consolidation of jail facilities and programs of contiguous governing units where feasible: *Provided*, That such consolidation is approved by all participating governing units;

(iii) Insure that each governing unit or consolidation of governing units applying for state funds under this chapter has submitted a plan which demonstrates that pretrial and posttrial alternatives to incarceration are being considered within the governmental unit;

(iv) Establish criteria and procedures for setting priorities among the projects approved for state funding for purposes of allocating state funds actually available; and

(v) Establish procedures for the submission, review, and approval or denial of projects submitted and appeals from adverse determinations, including time periods applicable thereto.

(4) The commission shall review all submitted projects with the office of financial management and the office of financial management shall provide technical assistance to the commission for purposes of insuring the accuracy of statistical information to be used by the commission in determining projects to be funded.

(5) The commission shall oversee approved construction and remodeling to the extent necessary to assure compliance with the standards adopted and approved pursuant to RCW 70.48.050(5).

(6) The commission shall develop estimates of the costs of the capital construction grants for each biennium required under the provisions of this chapter. The estimates shall be submitted to the office of financial management consistent with the provisions of chapter 43.88 RCW and the office of financial management shall review and approve or disapprove within thirty days.

(7) The commission and the office of financial management shall jointly report to the legislature on or before the convening of a regular session as to the projects approved for funding, construction status of such projects, funds expended and encumbered to date, and updated population and incarceration statistics.

(8) The jail commission shall examine, and by December 1, 1980, present to the legislature recommendations relating to detention and correctional services, including the formulation of the role of state and local governing units regarding detention and correctional facilities. [1979 1st ex.s. c 232 § 9; 1979 c 151 § 170; 1977 ex.s. c 316 § 6.]

Sunset Act application: See note following RCW 70.48.030.

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.070 Jails—Compliance with chapter, rules, regulations, and standards directed—Variances. All jails shall be constructed, operated, and maintained in compliance with the provisions and intent of this chapter and the rules, regulations, and standards adopted thereunder: *Provided*, That, as limited by this section, compliance with such rules, regulations, and standards shall be pursuant to the time schedules set by the commission for classes of facilities:

(1) The mandatory custodial care standards that are essential for the health, welfare, and security of persons confined, which are adopted pursuant to RCW 70.48.050(1)(a), shall be proposed by the commission to the legislature no later than December 31, 1978;

(2) The physical plant standards which are adopted and approved pursuant to RCW 70.48.050(5) shall not be mandatory unless, pursuant to the provisions of RCW 70.48.110, the state fully funds the cost of implementing such standards for detention and correctional facilities: *Provided*, That, such funds shall be subject to appropriation: *Provided further*, That after such funds are made available, local jurisdictions shall have a period of time before such standards are mandatory that is adequate to effect any needed construction or repairs: *Provided further*, That those provisions of RCW 70.48.060 and 70.48.110 requiring approval prior to funding and commencement of construction or remodeling shall not apply to prevent the funding of jails of governing units which have appropriated funds for substantial remodeling or construction of jails after February 16, 1974, and before June 23, 1977. Approval in such cases may be given retroactively: *Provided further*, That the commission may grant variances from the physical plant standards consistent with the intent of this chapter, and such standards shall otherwise be mandatory for purposes of this section and RCW 70.48.080 and jail facilities approved by the commission shall be deemed to comply with the physical plant standards;

(3) The mandatory custodial care standards and physical plant standards as submitted by the commission to the legislature on December 20, 1978 are hereby approved and shall take effect after adoption by the commission. Mandatory custodial care standards shall be complied with no later than October 1, 1979;

(4) Modifications of the standards or additional standards may be adopted by the commission pursuant to chapter 34.04 RCW. [1979 1st ex.s. c 232 § 14; 1979 c 147 § 2; 1977 ex.s. c 316 § 7.]

Sunset Act application: See note following RCW 70.48.030.

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.080 Closure of jails not meeting standards—Procedure—Transfer of prisoners. All jails which do not meet the appropriate mandatory custodial care standards and physical plant standards may be required to be closed, entirely or in part, until such requirements are met, pursuant to the following procedures:

(1) In the event the commission finds a jail does not comply with the appropriate mandatory custodial care and/or physical plant standards, notice shall be given to

the governing unit which shall be either a notice of non-compliance, a notice of conditional compliance for the continued operation of the jail under such restrictions as the commission determines to be appropriate, or a notice of full or partial closure.

(2) Such notices shall specify the manner in which the jail does not comply with the standards. In issuing such notices consideration shall be given to the magnitude and seriousness of the deficiencies and their potential effect on the health and safety of jail inmates, the cost of correction, and other information deemed relevant by the commission.

(3) (a) If the commission issues a notice of noncompliance, it shall specify in the notice the time limits within which the standards are to be met.

(b) If the commission determines that there will be compliance with the standards provided that certain conditions or restrictions which the commission determines to be appropriate are applied, the commission may issue a notice of conditional compliance setting out the conditions and restrictions which the commission determines to be appropriate. A certificate of conditional compliance may be issued thereon.

(c) In those cases where the nature and extent of the deficiencies are such that a notice of immediate full or partial closure is deemed necessary by the commission in order to preserve the health and safety of persons in the jail, a notice of immediate full or partial closure may be issued by the commission.

(4) Within thirty days after the date of receipt of a notice of noncompliance, a notice of conditional compliance, or a notice of full or partial closure, the appropriate governing unit may request a review thereof by the commission which review shall be heard not more than forty-five days following such request unless such period is extended not more than another forty-five days by order of the commission. All reviews conducted under this section shall be deemed to be "contested cases" within the meaning of chapter 34.04 RCW.

The commission shall hear and decide the review, and the decision of the commission may be appealed to the superior court as provided in chapter 34.04 RCW.

(5) If a notice of full or partial closure is issued and upheld, or if a notice of conditional compliance is issued and the conditions or restrictions are not complied with, or if a notice of noncompliance is issued and upheld and compliance is not satisfactorily accomplished within the time prescribed in the notice, the attorney general, upon request and on behalf of the commission, shall apply to the superior court of the county in which the jail is located for an order of closure of all or part of the jail and the court shall have authority to issue such order of closure or prescribe other appropriate relief.

(6) In the event an order of closure is issued by the superior court, all confined persons in custody in the jail or portions thereof ordered closed shall be transferred, provided sufficient space is available, to a suitable, available jail, and the transferring governing unit shall pay for the costs of board, room, program, and administration of such transferred persons, pursuant to the rate for such costs established by the governing unit accepting such confined persons. If a transferring governing

unit disputes the rates established by the governing unit accepting, the commission shall set the rates. [1977 ex.s. c 316 § 8.]

Sunset Act application: See note following RCW 70.48.030.

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.090 Interlocal contracts for jail services—Responsibility for operation of jail—Departments of corrections authorized. (1) Contracts for jail services may be made between a county and city located within the boundaries of a county, and among counties. The contracts shall: Be in writing, give one governing unit the responsibility for the operation of the jails, specify the responsibilities of each governing unit involved, and include the applicable charges for custody of the prisoners as well as the basis for adjustments in the charges. The contracts may be terminated only by ninety days written notice to the governing units involved and to the commission. The notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

(2) The contract authorized in subsection (1) of this section shall be for a minimum term of ten years when state funds are provided to construct or remodel a jail in one governing unit that will be used to house prisoners of other governing units. The contract may not be terminated prior to the end of the term without the commission's approval. If the contract is terminated, or upon the expiration and nonrenewal of the contract, the governing unit whose jail facility was built or remodeled to hold the prisoners of other governing units shall pay to the state treasurer the amount set by the commission when it authorized disbursement of state funds for the remodeling or construction under RCW 70.48.120. This amount shall be deposited in the local jail improvement and construction account and shall fairly represent the construction costs incurred in order to house prisoners from other governing units. The commission may pay the funds to the governing units which had previously contracted for jail services under rules which the commission may adopt. The acceptance of state funds for constructing or remodeling consolidated jail facilities constitutes agreement to the proportionate amounts set by the commission. Notice of the proportionate amounts shall be given to all governing units involved.

(3) A city or county primarily responsible for the operation of a jail or jails may create a department of corrections to be in charge of such jail and of all persons confined therein by law, subject to the authority of the governing unit. If such department is created, it shall have charge of jails and persons confined therein. If no such department of corrections is created, the chief law enforcement officer of the city or county primarily responsible for the operation of said jail shall have charge of the jail and of all persons confined therein. A department of corrections or the chief law enforcement officer shall operate a jail in conformance with the rules and regulations adopted by the commission and any rules, regulations, or ordinances adopted by the governing unit. [1979 1st ex.s. c 232 § 15; 1977 ex.s. c 316 § 9.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.100 Jail register—Required—Contents—Confidentiality of records. (1) A department of corrections or chief law enforcement officer responsible for the operation of a jail shall maintain a jail register, open to the public, into which shall be entered in a timely basis:

(a) The name of each person confined in the jail with the hour, date and cause of the confinement; and

(b) The hour, date and manner of each person's discharge.

(2) The records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies as defined in RCW 43.43.705; or

(a) For use in inspections made pursuant to RCW 70.48.070;

(b) In jail certification proceedings;

(c) For use in court proceedings upon the written order of the court in which the proceedings are conducted; or

(d) Upon the written permission of the person. [1977 ex.s. c 316 § 10.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.110 Costs of new construction or remodeling—Approval—Conditions—Commission's duties—Payments. Upon obtaining approval for the substantial remodeling or construction of a jail pursuant to RCW 70.48.060 and biennial appropriation of the legislature, a governing unit shall receive full funding from the state for the costs of the necessary new construction or improvements to or remodeling of existing detention or correctional facilities necessary to comply with the standards established pursuant to this chapter. The commission shall biennially establish for each application the level of costs necessary to comply with the physical plant standards and shall authorize payment by the state treasurer of the designated amount from the local jail improvement and construction account created in RCW 70.48.120 to the eligible governing unit in accordance with procedures established by the commission. [1977 ex.s. c 316 § 11.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.120 Local jail improvement and construction account. There is hereby established in the state treasury a fund to be known as the local jail improvement and construction account in which shall be deposited such sums as are appropriated by law for the purpose of providing funds to units of local government for new construction and the substantial remodeling of detention and correctional facilities so as to obtain compliance with the physical plant standards for such facilities. Funds in the local jail improvement and construction account shall be invested in the same manner as other funds in other accounts within the state treasury, and such earnings shall accrue to the local jail improvement

and construction account. Funds in this account shall be disbursed by the state treasurer to units of local government, subject to biennial legislative appropriation, at the direction of the commission. [1977 ex.s. c 316 § 12.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.130 Emergency or necessary health care for confined persons—Reimbursement procedures—Conditions—Limitations. Payment for emergency or necessary health care shall be by the governing unit, except that the department shall reimburse the governing unit for the cost thereof if the confined person requires treatment for which such person is eligible under the department's public assistance medical program.

The governing unit may obtain reimbursement from the confined person for the cost of emergency and other health care to the extent that such person is reasonably able to pay for such care, including reimbursement from any insurance program or from other medical benefit programs available to such person. To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for financial assistance from the department or from a private source, the governing unit may obtain reimbursement for the cost of such services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail: *Provided*, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

This section is not intended to limit or change any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided or paid for.

Under no circumstance shall necessary medical services be denied or delayed pending a determination of financial responsibility. [1977 ex.s. c 316 § 13.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.140 Confinement pursuant to authority of the United States. A person having charge of a jail shall receive and keep in such jail, when room is available, all persons confined or committed thereto by process or order issued under authority of the United States until discharged according to law, the same as if such persons had been committed under process issued under authority of the state, if provision is made by the United States for the support of such persons confined, and for any additional personnel required. [1977 ex.s. c 316 § 14.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.150 Temporary committee—Created—Membership—Duties—Report to legislature. (1) It is the intent of the legislature that the temporary committee that is created pursuant to subsection (2) of this section shall avoid custodial facility and program duplication between the state and units of local government, and between the various units of local government. It is also the intent of the legislature to effectuate economies of scale and effective management of and care for persons who are confined in local jails and state custodial facilities.

(2) The following persons shall constitute a temporary committee which shall hold hearings and draft a proposal which prescribes the specific role of the state and local units of government, and the nature of any custodial facilities operated by the state and local units of government, with regard to the custody of persons who are arrested for, and/or convicted of violating statutes or ordinances which define crimes:

(a) Three members of the commission who are local elected officials, and who are appointed to such committee by the chairperson of the commission;

(b) Three representatives of the department, who are appointed by the secretary; and

(c) One member of the senate and one member of the house of representatives who are appointed by the governor.

(3) This temporary committee shall present such proposals to the commission and to the legislature on or before December 15, 1978, and shall dissolve ninety days after the presentation of such proposal. [1977 ex.s. c 316 § 15.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.160 Post-approval limitation on funding. Having received approval pursuant to RCW 70.48.060:

(1) A governing unit shall not be eligible for further funding for physical plant standards for a period of ten years from the date of the completion of the said approved project; and

(2) A jail shall not be closed for noncompliance to physical plant standards within this same ten year period.

However, this section shall not apply if there is destruction of the facility because of an act of God or the result of a negligent and/or criminal act. [1977 ex.s. c 316 § 16.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.170 Short title. This chapter shall be known and may be cited as the City and County Jails Act. [1977 ex.s. c 316 § 17.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.180 Authority to locate and operate jail facilities—Counties. Counties may acquire, build, operate and maintain holding, detention, and correctional facilities as defined in RCW 70.48.020 at any place designated by the county legislative authority within the

territorial limits of the county. The facilities shall comply with chapter 70.48 RCW and the rules adopted thereunder. [1979 1st ex.s. c 232 § 16.]

70.48.190 Authority to locate and operate jail facilities—Cities and towns. Cities and towns may acquire, build, operate and maintain holding, detention and correctional facilities as defined in RCW 70.48.020 at any place within the territorial limits of the county in which the city or town is situated, as may be selected by the legislative authority of the municipality: *Provided*, That such facilities comply with the provisions of chapter 70.48 RCW and rules adopted thereto. [1977 ex.s. c 316 § 19; 1965 c 7 § 35.21.330. Prior: 1917 c 103 § 1; RRS § 10204. Formerly RCW 35.21.330.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.010.

70.48.200 Planning jail facility capacity, funding. (1) In determining the capacity of a planned jail facility for purposes of funding under this chapter, the commission shall consider all relevant information, including data supplied to the commission by the office of financial management with regard to the governing unit's population projections, current incarceration rates as applied to population projections by age group, and peaking factors not to exceed 1.29 standard deviations above the mean average daily population.

(2) The number of square feet allowed per bed shall generally be consistent for facilities of similar size and classification within either major urban, medium urban, or rural counties.

(3) Funds shall be allocated to governing units based on authorized beds and square feet as determined by the commission under this chapter and the rules adopted pursuant thereto.

(4) Total dollars allocated to a governing unit for new construction or renovation shall be the lesser of the amount specified in an accepted bid, the amount computed in subsection (3) of this section, or the budget request submitted to the commission by the governing unit.

(5) If a governing unit determines the assumptions specified in subsection (1) of this section are to be exceeded, then the funding responsibility in excess of amount determined by the commission will be that of the governing unit.

(6) The office of financial management shall assist governing units in obtaining whatever federal grants and aid might be available for jail construction and renovation. The amount of such grants or aid which might be obtained shall be deducted from the moneys which would otherwise be granted to the governing units from the funds from the sale of bonds authorized by RCW 70.48.260.

(7) Jails which are constructed and/or renovated with funds provided pursuant to this chapter shall not be considered state buildings for the purposes of RCW 43.17.200. [1979 1st ex.s. c 232 § 10.]

70.48.210 Farms, camps, and work release programs.

(1) All cities and counties are authorized to establish

and maintain farms, camps, and work release programs and facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail whenever the prisoner is not employed and between the hours or periods of employment unless the court directs otherwise.

(d) The chief law enforcement officer or his designee shall collect the work release prisoner's earnings and from the earnings make payments for the prisoner's board, personal expenses inside and outside the jail, and share of the administrative expenses of this section. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used to pay the prisoner's preexisting debts. Any balance shall be retained and paid to the prisoner when the prisoner is discharged.

(e) With court approval the prisoner's sentence may be reduced by one-fourth if the prisoner's conduct, diligence, and general attitude merit the reduction.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence. [1979 1st ex.s. c 232 § 17.]

70.48.220 Confinement may be wherever jail services are contracted. A person convicted of an offense punishable by imprisonment in a city or county jail may be confined in the jail of any city or county contracting with the prosecuting city or county for jail services. [1979 1st ex.s. c 232 § 19.]

70.48.230 Transportation and temporary confinement of prisoners. The jurisdiction having immediate authority over a prisoner is responsible for the transportation expenses. The transporting officer shall have custody of the prisoner within any Washington county while being transported. Any jail within the state may be used for the temporary confinement of the prisoner with the only charge being for the reasonable cost of board. [1979 1st ex.s. c 232 § 18.]

70.48.240 Limiting detention of felons before transfer to state institution. A person imprisoned in a detention or correctional facility who has not obtained a bail bond shall be transferred to a state institution designated by the secretary pending the appeal of a felony conviction after the thirtieth day and before the forty-first day from the date on which the judgment was entered. Upon a showing of good cause, a superior court judge may order the prisoner detained in the county jail for an additional period not to exceed ten days; except that this provision does not apply to persons sentenced for a felony who are held in the facility as a condition of probation or who are specifically sentenced to confinement in the facility. [1979 1st ex.s. c 232 § 20.]

70.48.250 Legislative declaration. In order for the state to provide safe and humane detention and correctional facilities, its long range development goals must include the renovation of jail buildings and facilities. [1979 1st ex.s. c 232 § 1.]

70.48.260 General obligation bonds authorized for jail construction, improvement. For the purpose of providing funds for the planning, acquisition, construction, and improvement of jail buildings and necessary supporting facilities within the state, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one hundred six million dollars, or so much thereof as may be required, to finance the improvements defined in this chapter and all costs incidental thereto but not including acquisition or preparation of sites. These bonds shall be paid and discharged within thirty years. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation of the proceeds of the bonds to be sold. [1979 1st ex.s. c 232 § 2.]

70.48.270 Disposition of proceeds from sale of bonds. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the local jail improvement and construction account hereby created in the general fund and shall be used exclusively for the purpose specified in this chapter and for payment of the expenses incurred in the issuance and sale of the bonds. [1979 1st ex.s. c 232 § 3.]

70.48.280 Proceeds of bond sale—Deposits—Administration. The proceeds from the sale of the bonds deposited in the local jail improvement and construction account of the general fund under the terms of this chapter shall be administered by the Washington state jail commission subject to legislative appropriation. [1979 1st ex.s. c 232 § 4.]

70.48.290 Bonds—Terms and other particulars. The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. None of the bonds authorized in this chapter shall be sold for less than their par value. [1979 1st ex.s. c 232 § 5.]

70.48.300 Anticipation notes. When the state finance committee has decided to issue the bonds, or a portion thereof, it may, pending the issuing of the bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "anticipation notes." Such portion of the proceeds of the sale of the bonds as may be required for this purpose shall be applied to the payment of the principal of and interest on any of these anticipation notes which have been issued. The bonds and notes shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal and interest when due. The state finance committee may authorize the use of a printed facsimile of the seal of the state of Washington in the issuance of the bonds and notes. [1979 1st ex.s. c 232 § 6.]

70.48.310 Jail renovation bond retirement fund. The jail renovation bond retirement fund is hereby created in the state treasury. This fund shall be used for the payment of interest on and retirement of the bonds and notes authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the jail renovation bond retirement fund an amount equal to the amount certified by the state finance committee to be due on the payment date. The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

If a state general obligation bond retirement fund is created in the state treasury by chapter 230, Laws of 1979 1st ex. sess., and becomes effective by statute prior to the issuance of any of the bonds authorized by this chapter, the retirement fund shall be used for purposes of this chapter in lieu of the jail renovation bond retirement fund, and the jail renovation bond retirement fund shall cease to exist. [1979 1st ex.s. c 232 § 7.]

70.48.320 Bonds legal investments for public funds. The bonds authorized in this chapter shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1979 1st ex.s. c 232 § 8.]

Chapter 70.50 STATE OTOLOGIST

Sections

70.50.010 Appointment—Salary.
70.50.020 Duties.

Hearing tests for public school children: RCW 28A.31.030.

70.50.010 Appointment—Salary. The secretary of social and health services shall appoint and employ an otologist skilled in diagnosis of diseases of the ear and defects in hearing, especially for school children with an impaired sense of hearing, and shall fix the salary of such otologist in a sum not exceeding the salary of the secretary. [1979 c 141 § 108; 1945 c 23 § 1; Rem. Supp. 1945 § 6010–10.]

70.50.020 Duties. The otologist shall cooperate with the state department of public instruction, and with the state, county and city health officers, seeking for the children in the schools who are hard of hearing, or have an impaired sense of hearing, and making otological inspections and examinations of children referred to him by such departments and officers. Where necessary or proper he shall make recommendations to parents or guardians of such children, and urge them to submit such recommendations to physicians to be selected by such parents or guardians. [1945 c 23 § 2; Rem. Supp. 1945 § 6010–11.]

Chapter 70.54 MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Sections

70.54.010 Polluting water supply—Penalty.
70.54.020 Furnishing impure water—Penalty.
70.54.030 Pollution of watershed of city in adjoining state—Penalty.
70.54.040 Secretary to advise local authorities on sanitation.
70.54.050 Exposing contagious disease—Penalty.
70.54.060 Ambulances and drivers.
70.54.065 Ambulances and drivers—Penalty.
70.54.070 Door of public buildings to swing outward—Penalty.
70.54.080 Liability of person handling steamboat or steam boiler.
70.54.090 Attachment of objects to utility poles.
70.54.100 Penalty for violation of RCW 70.54.090.
70.54.110 New housing for agricultural workers to comply with board of health regulations.
70.54.120 Immunity from implied warranties and civil liability relating to blood, plasma, and blood derivatives—Scope—Effective date.
70.54.130 Laetrile—Legislative declaration.
70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Board of pharmacy, duties.

70.54.150 Physicians not subject to disciplinary action for prescribing or administering laetrile—Conditions.
70.54.160 Public restrooms—Pay facilities.
70.54.170 Penalty for violation of RCW 70.54.160.
70.54.180 Telecommunication devices.

Control of cities and towns over water pollution: Chapter 35.88 RCW.

Nuisances, generally: Chapters 7.48 and 9.66 RCW.

Water pollution control: Chapter 90.48 RCW.

70.54.010 Polluting water supply—Penalty. Every person who shall deposit or suffer to be deposited in any spring, well, stream, river or lake, the water of which is or may be used for drinking purposes, or on any property owned, leased or otherwise controlled by any municipal corporation, corporation or person as a watershed or drainage basin for a public or private water system, any matter or thing whatever, dangerous or deleterious to health, or any matter or thing which may or could pollute the waters of such spring, well, stream, river, lake or water system, shall be guilty of a gross misdemeanor. [1909 c 249 § 290; RRS § 2542.]

70.54.020 Furnishing impure water—Penalty. Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. [1909 c 249 § 291; RRS § 2543.]

70.54.030 Pollution of watershed of city in adjoining state—Penalty. Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine in any sum not exceeding five hundred dollars. [1909 c 16 § 2; RRS § 9281.]

70.54.040 Secretary to advise local authorities on sanitation. The commissioners of any county or the mayor of any city may call upon the secretary of social and health services for advice relative to improving sanitary conditions or disposing of garbage and sewage or obtaining a pure water supply, and when so called upon the secretary of social and health services shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his advice thereon to the county or city making such request. [1979 c 141 § 109; 1909 c 208 § 3; RRS § 6006.]

70.54.050 Exposing contagious disease—Penalty. Every person who shall wilfully expose himself to another, or any animal affected with any contagious or infectious disease, in any public place or thoroughfare,

except upon his or its necessary removal in a manner not dangerous to the public health; and every person so affected who shall expose any other person thereto without his knowledge, shall be guilty of a misdemeanor. [1909 c 249 § 287; RRS § 2539.]

70.54.060 Ambulances and drivers. (1) The drivers of all ambulances shall be required to take the advanced first aid course as prescribed by the American Red Cross.

(2) All ambulances must be at all times equipped with first aid equipment consisting of leg and arm splints and standard twenty-four unit first aid kit as prescribed by the American Red Cross. [1945 c 65 § 1; Rem. Supp. 1945 § 6131-1. FORMER PART OF SECTION: 1945 c 65 § 2 now codified as RCW 70.54.060, part.]

70.54.065 Ambulances and drivers—Penalty. Any person violating any of the provisions herein shall be guilty of a misdemeanor. [1945 c 65 § 2; Rem. Supp. 1945 § 6131-2. Formerly RCW 70.54.060, part.]

70.54.070 Door of public buildings to swing outward—Penalty. The doors of all theatres, opera houses, school buildings, churches, public halls, or places used for public entertainments, exhibitions or meetings, which are used exclusively or in part for admission to or egress from the same, or any part thereof, shall be so hung and arranged as to open outwardly, and during any exhibition, entertainment or meeting, shall be kept unlocked and unfastened, and in such condition that in case of danger or necessity, immediate escape from such building shall not be prevented or delayed; and every agent or lessee of any such building who shall rent the same or allow it to be used for any of the aforesaid public purposes without having the doors thereof hung and arranged as hereinbefore provided, shall, for each violation of any provision of this section, be guilty of a misdemeanor. [1909 c 249 § 273; RRS § 2525.]

70.54.080 Liability of person handling steamboat or steam boiler. Every person who shall apply, or cause to be applied to a steam boiler a higher pressure of steam than is allowed by law, or by any inspector, officer or person authorized to limit the same; every captain or other person having charge of the machinery or boiler in a steamboat used for the conveyance of passengers on the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of such boat, shall create or cause to be created an undue or unsafe pressure of steam; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or employing steam, who shall wilfully or from ignorance or gross neglect, create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident, whereby human life is endangered, shall be guilty of a gross misdemeanor. [1909 c 249 § 280; RRS § 2532.]

*Boilers and unfired pressure vessels: Chapter 70.79 RCW.
Division of safety: Chapter 43.22 RCW.*

70.54.090 Attachment of objects to utility poles. It shall be unlawful to attach to utility poles any of the following: Advertising signs, posters, vending machines, or any similar object which presents a hazard to, or endangers the lives of, electrical workers. Any attachment to utility poles shall only be made with the permission of the utility involved, and shall be placed not less than twelve feet above the surface of the ground. [1953 c 185 § 1.]

70.54.100 Penalty for violation of RCW 70.54.090. Every person violating the provisions of RCW 70.54.090 shall be guilty of a misdemeanor. [1953 c 185 § 2.]

70.54.110 New housing for agricultural workers to comply with board of health regulations. All new housing and new construction together with the land areas appurtenant thereto which shall be started on and after May 3, 1969, and is to be provided by employers, growers, management, or any other persons, for occupancy by workers or by workers and their dependents, in agriculture, shall comply with the rules and regulations of the state board of health pertaining to labor camps, filed with the office of the code reviser on November 20, 1968 and future amendments and revisions thereof. [1969 ex.s. c 231 § 1.]

Sunset Act application: See note following RCW 43.20.030.

70.54.120 Immunity from implied warranties and civil liability relating to blood, plasma, and blood derivatives—Scope—Effective date. The procurement, processing, storage, distribution, administration, or use of whole blood, plasma, blood products and blood derivatives for the purpose of injecting or transfusing the same, or any of them, into the human body is declared to be, for all purposes whatsoever, the rendition of a service by each and every person, firm, or corporation participating therein, and is declared not to be covered by any implied warranty under the Uniform Commercial Code, Title 62A RCW, or otherwise, and no civil liability shall be incurred as a result of any of such acts, except in the case of wilful or negligent conduct: *Provided, however,* That this section shall apply only to liability alleged in the contraction of hepatitis and malaria and shall not apply to any transaction in which the blood donor receives compensation: *Provided further,* That this section shall only apply where the person, firm or corporation rendering the above service shall have maintained records of donor suitability and donor identification similar to those specified in sections 73.301 and 73.302(e) as now written or hereafter amended in Title 42, Public Health Service Regulations adopted pursuant to the Public Health Service Act, 42 U.S.C. 262: *Provided further,* That nothing in this section shall be considered by the courts in determining or applying the law to any blood transfusion occurring before June 10, 1971 and the court shall decide such case as though this section had not been passed. [1971 c 56 § 1.]

Severability—1971 c 56: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of

the act, or the application of the provision to other persons or circumstances is not affected." [1971 c 56 § 2.] This applies to RCW 70.54.120.

70.54.130 Laetrile—Legislative declaration. It is the intent of the legislature that passage of RCW 70.54.130 through 70.54.150 shall not constitute any endorsement whatever of the efficacy of amygdalin (Laetrile) in the treatment of cancer, but represents only the legislature's endorsement of a patient's freedom of choice, so long as the patient has been given sufficient information in writing to make an informed decision regarding his/her treatment and the substance is not proven to be directly detrimental to health. [1977 ex.s. c 122 § 1.]

70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Board of pharmacy, duties. No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of amygdalin (Laetrile) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

For the purposes of RCW 70.54.130 through 70.54.150, the state board of pharmacy shall provide for the certification as to the identity of amygdalin (Laetrile) by random sample testing or other testing procedures, and shall promulgate rules and regulations necessary to implement and enforce its authority under this section. [1977 ex.s. c 122 § 2.]

70.54.150 Physicians not subject to disciplinary action for prescribing or administering laetrile—Conditions. No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering amygdalin (Laetrile) to a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct as defined in RCW 18.57.170 and 18.72.030. [1977 ex.s. c 122 § 3.]

70.54.160 Public restrooms—Pay facilities. (1) Every establishment which maintains restrooms for use by the public shall not discriminate in charges required between facilities used by men and facilities used by women.

(2) When coin lock controls are used, the controls shall be so allocated as to allow for a proportionate equality of free toilet units available to women as compared with those units available to men, and at least one-half of the units in any restroom shall be free of charge. As used in this section, toilet units are defined as constituting commodes and urinals.

(3) In situations involving coin locks placed on restroom entry doors, admission keys shall be readily provided without charge when requested, and notice as to

the availability of the keys shall be posted on the restroom entry door. [1977 ex.s. c 97 § 1.]

70.54.170 Penalty for violation of RCW 70.54.160. Any owner, agent, manager, or other person charged with the responsibility of the operation of an establishment who operates such establishment in violation of RCW 70.54.160 shall be guilty of a misdemeanor. [1977 ex.s. c 97 § 2.]

70.54.180 Telecommunication devices. (1) For the purpose of this section "telecommunication device" means an instrument for telecommunication in which speaking or hearing is not required for communicators.

(2) The county legislative authority of each fourth class or larger county and the governing body of each city with a population in excess of ten thousand shall provide by July 1, 1980 for a telecommunication device in their jurisdiction or through a central dispatch office that will assure access to police, fire, or other emergency services.

(3) The county legislative authority of each fifth class or smaller county shall by July 1, 1980 make a determination of whether sufficient need exists with their respective counties to require installation of a telecommunication device. Reconsideration of such determination will be made at any future date when a deaf individual indicates a need for such an instrument. [1979 1st ex.s. c 63 § 2.]

Purpose—1979 1st ex.s. c 63: "The legislature finds that many citizens of this state who are unable to utilize telephone services in a regular manner due to hearing defects are able to communicate by teletypewriters where hearing is not required for communication. Hence, it is the purpose of section 2 of this act [RCW 70.54.180] to require that telecommunication devices for the deaf be installed." [1979 1st ex.s. c 63 § 1.]

**Chapter 70.58
VITAL STATISTICS**

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- 70.58.340 Registry for handicapped children—Cooperation with private or public organizations or agencies—Contributions.
- 70.58.350 Registry for handicapped children—Rules and regulations.

70.58.010 Registration districts. Each city of the first class shall constitute a primary registration district and each county and the territory of counties jointly comprising a health district, exclusive of the portion included within cities of the first class, shall constitute a primary registration area. All other counties and municipal areas not included in the foregoing shall be divided into registration areas by the state registrar as he may deem essential to obtain the most efficient registration of vital events as provided by law. [1979 1st ex.s. c 52 § 2; 1951 c 106 § 4; 1915 c 180 § 1; 1907 c 83 § 2; RRS § 6019.]

70.58.020 Local registrars—Deputies. Under the direction and control of the state registrar, the health officer of each city of the first class shall be the local registrar in and for the primary registration district under his supervision as health officer and the health officer of each county and district health department shall be the local registrar in and for the registration area which he supervises as health officer and shall serve as such as long as he performs the registration duties as prescribed by law. He may be removed as local registrar of the registration area which he serves by the state board of health upon its finding of evidence of neglect in the performance of his duties as such registrar. The state registrar shall appoint local registrars for those registration areas not included in the foregoing and also in areas where the state board of health has removed the health officer from this position as registrar.

Each local registrar, subject to the approval of the state registrar, shall appoint in writing a sufficient number of deputy registrars to administer the laws relating to vital statistics, and shall certify the appointment of such deputies to the state registrar. Deputy registrars shall act in the case of absence, death, illness or disability of the local registrar, or such other conditions as may be deemed sufficient cause to require their services. [1979 1st ex.s. c 52 § 3; 1961 ex.s. c 5 § 5; 1951 c 106 § 5; 1915 c 180 § 2; 1907 c 83 § 3; RRS § 6020.]

Director of combined city-county health department as registrar: RCW 70.08.060.

70.58.030 Duties of local registrars. The local registrar shall supply blank forms of certificates to such persons as require them. He shall carefully examine each certificate of birth, death, and fetal death when presented for record, and see that it has been made out in accordance with the provisions of law and the instructions of the state registrar. If any certificate of death is incomplete or unsatisfactory, he shall call attention to the defects in the return, and withhold issuing the burial-transit permit until it is corrected. If the certificate of death is properly executed and complete, he shall issue a burial-transit permit to the funeral director or person acting as such. If a certificate of a birth is incomplete, he shall immediately notify the informant, and require him to supply the missing items if they can be obtained. He shall sign his name as local registrar to each certificate filed in attest of the date of filing in his office. He shall make a record of each birth, death, and fetal death certificate registered by him in such manner as directed by the state registrar. He shall on or before the tenth day of each month, transmit to the state registrar all original certificates registered by him during the preceding month. If no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for this purpose: *Provided*, That in cities of the first class the city health officer may require the filing of two original certificates and may retain one of the duplicate original certificates as the city record. [1961 ex.s. c 5 § 6; 1907 c 83 § 18; RRS § 6035.]

70.58.040 Compensation of local registrars. A local registrar shall be paid the sum of one dollar for each birth, death, or fetal death certificate registered for his district which sum shall cover making out the burial-transit permit and record of the certificate to be filed and preserved in his office. If no births or deaths were registered during any month, the local registrar shall be paid the sum of one dollar for each report to that effect: *Provided*, That all local health officers who are by statute required to serve as local registrars shall not be entitled to the fee of one dollar. Neither shall any members of their staffs be entitled to the above fee of one dollar when such persons serve as deputy registrars. All fees payable to local registrars shall be paid by the treasurer of the county or city, properly chargeable therewith, out of the funds of the county or city, upon warrants drawn by the auditor, or other proper officer of the county or city. No warrant shall be issued to a local registrar except upon a statement, signed by the state registrar, stating the names and addresses respectively of the local registrars entitled to fees from the county or city, and the number of certificates and reports of births, deaths, and fetal deaths, properly returned to the state registrar, by each local registrar, during three preceding calendar months prior to the date of the statement, and the amount of fees to which each local registrar is entitled, which statement the state registrar shall file with the proper officers during the months of January, April,

July, and October of each year. Upon filing of the statement the auditor or other proper officer of the county or city shall issue warrants for the amount due each local registrar. [1961 ex.s. c 5 § 7; 1951 c 106 § 8; 1915 c 180 § 10; 1907 c 83 § 19; RRS § 6036.]

70.58.050 Duty to enforce law. The local registrars are hereby charged with the strict and thorough enforcement of the provisions of *this act in their districts, under the supervision and direction of the state registrar. And they shall make an immediate report to the state registrar of any violations of this law coming to their notice by observation or upon the complaint of any person, or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of *this act in every part of the state, and with supervisory power over local registrars, to the end that all of the requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all local registrars shall aid him, upon request, in such investigation. When he shall deem it necessary he shall report cases of violation of any of the provisions of *this act to the prosecuting attorney of the proper county with a statement of the fact and circumstances; and when any such case is reported to them by the state registrar, all prosecuting attorneys or officials acting in such capacity shall forthwith initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violations of law. And upon request of the state registrar the attorney general shall likewise assist in the enforcement of the provisions of *this act. [1907 c 83 § 22; RRS § 6039.]

*Reviser's note: "this act" appears in 1907 c 83 codified as RCW 70.58.010 through 70.58.100, 70.58.230 through 70.58.280, and 43.20A.620 through 43.20A.630.

70.58.070 Registration of births required. All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided. [1907 c 83 § 11; RRS § 6028.]

70.58.080 Birth certificates—Unwed mothers. The attending physician or midwife shall file a certificate of birth, properly and completely filled out, giving all of the particulars required, with the local registrar of the district in which the birth occurred, within ten days after the birth. If there is no attending physician or midwife, the father or mother of the child, householder or owner of the premises, manager or superintendent of the public or private institution in which the birth occurred, shall notify the local registrar, within ten days after the birth, of the fact of the birth, and the local registrar shall secure the necessary information and signature to make a proper certificate of birth.

When an infant is found for whom no certificate of birth is known to be on file, a birth certificate shall be filed within the time and in the form prescribed by the state board of health.

When no putative father is named on a birth certificate of a child born to an unwed mother the mother may

give any surname she so desires to her child but shall designate in space provided for father's name on the birth certificate "None Named". [1961 ex.s. c 5 § 8; 1951 c 106 § 6; 1907 c 83 § 12; RRS § 6029.]

70.58.095 New certificate of birth—Legitimation, paternity—Substitution for original—When delayed registration required. The state registrar of vital statistics shall establish a new certificate of birth for a person born in this state when he receives a request that a new certificate be established and such evidence as required by regulation of the state board of health proving that such person has been acknowledged, or that a court of competent jurisdiction has determined the paternity of such person. When a new certificate of birth is established, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of paternity, or acknowledgment shall not be subject to inspection except upon order of a court of competent jurisdiction. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed registration of birth shall be filed with the state registrar of vital statistics as provided in RCW 70.58.120. [1975-'76 2nd ex.s. c 42 § 38; 1961 ex.s. c 5 § 21.]

Severability—Savings—Construction—1975-'76 2nd ex.s. c 42: RCW 26.26.900–26.26.905.

70.58.100 Supplemental report on name of child. It shall be the duty of every local registrar when any certificate of birth of a living child is presented without statement of the given name, to make out and deliver to the parents of such child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed and returned to the registrar as soon as the child has been named. [1915 c 180 § 8; 1907 c 83 § 14; RRS § 6031.]

70.58.110 Delayed registration of births—Authorized. Whenever a birth which occurred in this state on or after July 1, 1907, is not on record in the office of the state registrar or in the office of the auditor of the county in which the birth occurred if the birth was prior to July 1, 1907, application for the registration of the birth may be made by the interested person to the state registrar: *Provided*, That if the person whose birth is to be recorded be a child under four years of age the attending physician, if available, shall make the registration. [1953 c 90 § 2; 1943 c 176 § 1; 1941 c 167 § 1; Rem. Supp. 1943 § 6011–1.]

70.58.120 Delayed registration of births—Application—Evidence required. The delayed registration of birth form shall be provided by the state registrar and shall be signed by the registrant if of legal age, or by the attendant at birth, parent, or guardian if the registrant is not of legal age. In instances of delayed registration of birth where the person whose birth is to be recorded is four years of age or over but under twelve years of age and in instances where the person whose birth is to be recorded is less than four years of age and the attending

physician is not available to make the registration, the facts concerning date of birth, place of birth, and parentage shall be established by at least one piece of documentary evidence. In instances of delayed registration of birth where the person whose birth is to be recorded is twelve years of age or over, the facts concerning date of birth and place of birth shall be established by at least three documents of which only one may be an affidavit. The facts concerning parentage shall be established by at least one document. Documents, other than affidavits, or documents established prior to the fourth birthday of the registrant, shall be at least five years old or shall have been made from records established at least five years prior to the date of application. [1961 ex.s. c 5 § 9; 1953 c 90 § 3; 1943 c 176 § 2; 1941 c 167 § 2; Rem. Supp. 1943 § 6011-2.]

70.58.130 Delayed registration of births—Where registered—Copy as evidence. The birth shall be registered in the records of the state registrar. A certified copy of the record shall be prima facie evidence of the facts stated therein. [1961 ex.s. c 5 § 10; 1953 c 90 § 4; 1951 c 106 § 2; 1943 c 176 § 4; 1941 c 167 § 4; Rem. Supp. 1943 § 6011-4.]

70.58.145 Order establishing record of birth when delayed registration not available—Procedure. When a person alleged to be born in this state is unable to meet the requirements for a delayed registration of birth in accordance with RCW 70.58.120, he may petition the superior court of the county of residence or of the county of birth for an order establishing a record of the date and place of his birth, and his parentage. The court shall fix a time for hearing the petition, and the state registrar shall be given notice at least twenty days prior to the date set for hearing in order that he may present at the hearing any information he believes will be useful to the court. If the court from the evidence presented to it finds that the petitioner was born in this state, the court shall issue an order to establish a record of birth. This order shall include the birth data to be registered. If the court orders the birth of a person born in this state registered, it shall be registered in the records of the state registrar. [1961 ex.s. c 5 § 20.]

70.58.150 "Fetal death", "evidence of life", defined. A fetal death means any product of conception that shows no evidence of life after complete expulsion or extraction from its mother. The words "evidence of life" include breathing, beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. [1961 ex.s. c 5 § 11; 1945 c 159 § 5; Rem. Supp. 1945 § 6024-5.]

70.58.160 Certificate of death or fetal death required. A certificate of every death or fetal death shall be filed with the local registrar of the district in which the death or fetal death occurred within three days after the occurrence is known, or if the place of death or fetal death is not known, then with the local registrar of the district in which the body is found within twenty-four hours thereafter. In every instance a certificate shall be

filed prior to the interment or other disposition of the body: *Provided*, That a certificate of fetal death shall not be required if the period of gestation is less than twenty weeks. [1961 ex.s. c 5 § 12; 1945 c 159 § 1; Rem. Supp. 1945 § 6024-1. Prior: 1915 c 180 § 4; 1907 c 83 § 5.]

70.58.170 Certificate of death or fetal death—By whom filed. The funeral director or person in charge of interment shall file the certificate of death or fetal death. In preparing such certificate, the funeral director or person in charge of interment shall obtain and enter on the certificate such personal data as the certificate requires from the person or persons best qualified to supply them. He shall present the certificate of death to the physician last in attendance upon the deceased, or, if the deceased died without medical attendance, to the health officer, coroner, or prosecuting attorney having jurisdiction, who shall thereupon certify the cause of death according to his best knowledge and belief and shall sign the certificate of death or fetal death within two days after being presented with the certificate unless good cause for not signing the certificate within the two days can be established. He shall present the certificate of fetal death to the physician, midwife, or other person in attendance at the fetal death, who shall certify the fetal death and such medical data pertaining thereto as he can furnish. [1979 1st ex.s. c 162 § 1; 1961 ex.s. c 5 § 13; 1945 c 159 § 2; Rem. Supp. 1945 § 6024-2.]

70.58.180 Certificate when no physician in attendance—Legally accepted cause of death. If the death occurred without medical attendance, the funeral director or person in charge of interment shall notify the coroner, or prosecuting attorney if there is no coroner in the county. If the circumstances suggest that the death or fetal death was caused by unlawful or unnatural causes or if there is no local health officer with jurisdiction, the coroner, or if none, the prosecuting attorney shall complete and sign the certification, noting upon the certificate that no physician was in attendance at the time of death. In case of any death without medical attendance in which there is no suspicion of death from unlawful or unnatural causes, the local health officer or his deputy, the coroner and if none, the prosecuting attorney, shall complete and sign the certification, noting upon the certificate that no physician was in attendance at the time of death, and noting the cause of death without the holding of an inquest or performing of an autopsy or post mortem, but from statements of relatives, persons in attendance during the last sickness, persons present at the time of death or other persons having adequate knowledge of the facts.

The cause of death, the manner and mode in which death occurred, as noted by the coroner or if none, the prosecuting attorney or the health officer and incorporated in the death certificate filed with the bureau of vital statistics of the board of health shall be the legally accepted manner and mode by which the deceased came to his or her death and shall be the legally accepted cause of death. [1961 ex.s. c 5 § 14; 1953 c 188 § 5; 1945 c 159 § 3; Rem. Supp. 1945 § 6024-3. Prior: 1915 c 180 § 5; 1907 c 83 § 7.]

70.58.190 Permit to dispose of body when cause of death undetermined. If the cause of death cannot be determined within three days, the certification of its cause may be filed after the prescribed period, but the attending physician, coroner, or prosecuting attorney shall give the local registrar of the district in which the death occurred written notice of the reason for the delay, in order that a permit for the disposition of the body may be issued if required. [1945 c 159 § 4; Rem. Supp. 1945 § 6024-4.]

70.58.200 Forms of birth, death, marriage, and decrees of divorce, annulment, or separate maintenance certificates—Contents—Confidentiality. The forms of birth, death, fetal death, marriage, and decrees of divorce, annulment, or separate maintenance certificates filed with the state registrar of vital statistics shall include the items required by the respective standard certificate as recommended by the federal agency responsible for national vital statistics, except that no information shall be required on the certificate of divorce relative to the date the couple separated or the number of children under eighteen years of age: *Provided*, That none of the information contained in the confidential section of the forms of marriage, divorce, annulment or separate maintenance shall be required: *Provided further*, That no information shall be required on the certificate of live birth relative to the education of the parents of the child. The Washington state board of health by regulation may require additional pertinent information relative to the birth and manner of delivery as it may deem necessary for statistical study. This information shall be placed in a confidential section of the birth certificate form and shall not be subject to the view of the public or for certification purposes except upon order of a court: *Provided*, That the state board of health may eliminate from the forms any such items that it determines are not necessary for statistical study. [1979 1st ex.s. c 162 § 2; 1975-'76 2nd ex.s. c 42 § 39; 1969 ex.s. c 279 § 2; 1967 c 26 § 10; 1961 ex.s. c 5 § 15; 1945 c 159 § 6; Rem. Supp. 1945 § 6024-6. Prior: 1907 c 83 § 6.]

Severability—Savings—Construction—1975-'76 2nd ex.s. c 42: RCW 26.26.900-26.26.905.

70.58.210 Birth certificate upon adoption. (1) Whenever a decree of adoption has been entered declaring a child, born in the state of Washington, adopted in any court of competent jurisdiction in the state of Washington or any other state or any territory of the United States, a certified copy of the decree of adoption shall be recorded with the proper department of registration of births in the state of Washington and a certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the adoptive parents of the child and the age, sex, and date of birth of the child, but no reference in any birth certificate shall have reference to the adoption of the child. However, original registration of births shall remain a part of the record of the board of health.

(2) Whenever a decree of adoption has been entered declaring a child, born outside of the United States and

its territories, adopted in any court of competent jurisdiction in the state of Washington, a certified copy of the decree of adoption together with evidence as to the child's birth date and birth place provided by the original birth certificate, or by a certified copy, extract, or translation thereof or by a certified copy of some other document essentially equivalent thereto, shall be recorded with the proper department of registration of births in the state of Washington. The records of the United States immigration and naturalization service or of the United States department of state are essentially equivalent to the birth certificate. A certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the adoptive parents of the child and the age, sex, and date of birth of the child, but no reference in any birth certificate shall have reference to the adoption of the child. Unless the court orders otherwise, the certificate of birth shall have the same overall appearance as the certificate which would have been issued if the adopted child had been born in the state of Washington.

A person born outside of the United States and its territories for whom a decree of adoption has been entered in a court of this state before September 1, 1979, may apply for a certificate of birth under this subsection by furnishing the proper department of registration of births with a certified copy of the decree of adoption together with the other evidence required by this subsection as to the date and place of birth. Upon receipt of the decree and evidence, a certificate of birth shall be issued in accordance with this subsection. [1979 1st ex.s. c 101 § 2; 1975-'76 2nd ex.s. c 42 § 40; 1943 c 12 § 1; 1939 c 133 § 1; Rem. Supp. 1943 § 6013-1.]

Severability—1979 1st ex.s. c 101: See note following RCW 26.32.120.

Severability—Savings—Construction—1975-'76 2nd ex.s. c 42: RCW 26.26.900-26.26.905.

Adoption: Chapter 26.32 RCW.

Decree of adoption for children born outside Washington: RCW 26.32.120.

Uniform parentage act: Chapter 26.26 RCW.

70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee. It shall be unlawful for any person to inter, deposit in a vault, grave, or tomb, cremate or otherwise dispose of, or disinter or remove from one registration district to another, or hold for more than seventy-two hours after death, the body or remains of any person whose death occurred in this state or any body which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the body was found, a permit for the burial, disinterment, or removal of such body: *Provided*, That a licensed funeral director or embalmer of this state may remove a body from the district where the death occurred to another registration district without having obtained a permit but in such cases the funeral director or embalmer shall at the time of removing a body file with or mail to the local registrar of the district where the death occurred a notice of removal upon a blank to be furnished by the state registrar. The notice

of removal shall be signed by the funeral director or embalmer and shall contain the name and address of the local registrar with whom the certificate of death will be filed and the burial-transit permit secured. Every local registrar, accepting a death certificate and issuing a burial-transit permit for a death that occurred outside his district, shall be entitled to a fee of one dollar to be paid by the funeral director or embalmer at the time the death certificate is accepted and the permit is secured. It shall be unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave, or tomb, or cremate or otherwise dispose of the body or remains of any person whose death occurred outside this state unless such body or remains be accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred, or unless a special permit for bringing such body into this state shall be obtained from the state registrar. [1961 ex.s. c 5 § 16; 1915 c 180 § 3; 1907 c 83 § 4; RRS § 6021.]

70.58.240 Duties of funeral directors. Each funeral director or person acting as such shall obtain a certificate of death and file the same with the local registrar, and secure a burial-transit permit, prior to any permanent disposition of the body. He shall obtain the personal and statistical particulars required, from the person best qualified to supply them. He shall present the certificate to the attending physician or in case the death occurred without any medical attendance, to the proper official for certification for the medical certificate of the cause of death and other particulars necessary to complete the record. He shall supply the information required relative to the date and place of disposition and he shall present the completed certificate to the local registrar, for the issuance of a burial-transit permit. He shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring the body; or shall attach the transit permit to the box containing the corpse, when shipped by any transportation company, and the permit shall accompany the corpse to its destination. [1961 ex.s. c 5 § 17; 1915 c 180 § 6; 1907 c 83 § 8; RRS § 6025.]

70.58.250 Burial-transit permit—Requisites. The burial-transit permit shall contain a statement by the local registrar and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or otherwise dispose of the body; stating the name of the deceased and other necessary details upon the form prescribed by the state registrar. [1961 ex.s. c 5 § 18; 1907 c 83 § 9; RRS § 6026.]

70.58.260 Burial grounds—Duties of sexton. It shall be unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated or otherwise permanently disposed of, to permit the interment, cremation or other disposition of any body upon such premises unless it is accompanied by a burial, removal or transit permit as hereinabove provided. It shall be the duty of the person in charge of any

such premises to, in case of the interment, cremation or other disposition of a body therein, endorse upon the permit the date and character of such disposition, over his signature, to return all permits so endorsed to the local registrar of his district within ten days from the date of such disposition, and to keep a record of all bodies disposed of on the premises under his charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the undertaker, which record shall at all times be open to public inspection, and it shall be the duty of every undertaker, or person acting as such, when burying a body in a cemetery or burial grounds having no person in charge, to sign the burial, removal or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge", and file the burial, removal or transit permit within ten days with the registrar of the district in which the cemetery is located. [1915 c 180 § 7; 1907 c 83 § 10; RRS § 6027.]

70.58.270 Data on inmates of hospitals, etc. All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions, at the date of approval of *this act, that are required in the form of the certificate provided for by this act, as directed by the state registrar; and thereafter such record shall be by them made for all future inmates at the time of their admission. And in case of persons admitted or committed for medical treatment of contagious disease, the physician in charge shall specify, for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself, if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from the relatives, friends, or other persons acquainted with the facts. [1907 c 83 § 16; RRS § 6033.]

*Reviser's note: "this act", see note following RCW 70.58.050.

70.58.280 Penalty. Every person who shall violate or wilfully fail, neglect or refuse to comply with any provisions of *this act shall be guilty of a misdemeanor and for a second offense shall be punished by a fine of not less than twenty-five dollars, and for a third and each subsequent offense shall be punished by a fine of not less than fifty dollars or more than two hundred and fifty dollars or by imprisonment for not more than ninety days, or by both fine and imprisonment, and every person who shall wilfully furnish any false information for any certificate required by *this act or who shall make any false statement in any such certificate shall be guilty of a gross misdemeanor. [1915 c 180 § 12; 1907 c 83 § 21; RRS § 6038.]

*Reviser's note: "this act", see note following RCW 70.58.050.

70.58.290 Local registrar to furnish list of deceased voters. See RCW 29.10.095.

70.58.300 Registry for handicapped children—Purpose. The purpose of this enactment is to provide a registry for handicapped children as an aid to their timely treatment and care. [1959 c 177 § 1.]

70.58.310 Registry for handicapped children—To be established and maintained. The secretary of social and health services, through the state registrar of vital statistics, shall establish and maintain a registry for handicapped children. [1979 c 141 § 110; 1959 c 177 § 2.]

70.58.320 Registry for handicapped children—Reports by physician as to congenital defects or disabling conditions. Whenever the attending physician discovers that a newborn child has a congenital defect, and whenever a physician discovers upon treating a child under the age of fourteen years that such child has a partial or complete disability or a condition which may lead to partial or complete disability, such fact shall be reported to the local registrar upon a form to be provided by the secretary of social and health services. No report shall be required if the disabling condition has been previously reported or the condition is not one required to be reported by the secretary of social and health services. Congenital defects shall be reported at the same time as birth certificates are required to be filed. Each physician shall make a report as to disabling conditions within thirty days after discovery thereof.

The forms to be provided by the secretary of social and health services for this purpose shall require such information as the secretary deems necessary to carry out the purpose of RCW 70.58.300 through 70.58.350. [1979 c 141 § 111; 1959 c 177 § 3.]

70.58.330 Registry for handicapped children—Reports of physicians confidential. Except compilations of statistical data furnished by the department, the information furnished in the reports required by RCW 70.58.320 shall be secret and shall not be revealed except upon order of the superior court. [1959 c 177 § 4.]

70.58.340 Registry for handicapped children—Cooperation with private or public organizations or agencies—Contributions. The secretary of social and health services and any local health officer is authorized to cooperate with and to promote the aid of any medical, health, nursing, welfare, or other private groups or organizations, and with any state agency or political subdivision to furnish statistical data in furtherance of the purpose of RCW 70.58.300 through 70.58.350. The secretary or any local health officer may accept contributions or gifts in cash or otherwise from any person, group, or governmental agency to further the purpose of RCW 70.58.300 through 70.58.350. [1979 c 141 § 112; 1959 c 177 § 5.]

70.58.350 Registry for handicapped children—Rules and regulations. The state board of health is authorized to make such rules and regulations as are necessary to carry out the purpose of RCW 70.58.300 through 70.58.350. [1959 c 177 § 6.]

Sunset Act application: See note following RCW 43.20.030.

Chapter 70.62

TRANSIENT ACCOMMODATIONS—
LICENSING—INSPECTIONS

Sections	
70.62.200	Purpose.
70.62.210	Definitions.
70.62.220	License required—Fee—Display.
70.62.230	Inspection fee.
70.62.240	Rules and regulations.
70.62.250	Powers and duties of department.
70.62.260	Licenses—Applications—Expiration—Renewal.
70.62.270	Suspension or revocation of licenses.
70.62.280	Violations—Penalty.
70.62.290	Fire and safety rules and regulations—Duties of state fire marshal.
70.62.900	Severability—1971 ex.s. c 239.

Reviser's note: Throughout this chapter, the terms "this 1971 amendatory act" or "this act" have been changed to "this chapter". "This 1971 amendatory act" and "this act" consist of this chapter, the amendment of RCW 43.22.050 and the repeal of RCW 70.62.010–70.62.130 and 43.22.060–43.22.110 by 1971 ex.s. c 239.

Food and beverage establishment workers' permits: Chapter 69.06 RCW.

Hotels: Chapter 19.48 RCW.

Inspection of hotels: RCW 43.22.050.

Lien of hotels, lodging and boarding houses: Chapter 60.64 RCW.

70.62.200 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of hotels and motels through a licensing program to promote the protection of the health and welfare of individuals using such accommodations in this state. [1971 ex.s. c 239 § 1.]

70.62.210 Definitions. The following terms whenever used or referred to in this chapter shall have the following respective meanings for the purposes of this chapter, except in those instances where the context clearly indicates otherwise:

(1) The term "transient accommodation" shall mean any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to travelers and transient guests.

(2) The term "person" shall mean any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(3) The term "secretary" shall mean the secretary of the Washington state department of social and health services and any duly authorized representative thereof.

(4) The term "board" shall mean the Washington state board of health.

(5) The term "department" shall mean the Washington state department of social and health services.

(6) The term "lodging unit" shall mean one self-contained unit designated by number, letter or some other method of identification. [1971 ex.s. c 239 § 2.]

70.62.220 License required—Fee—Display. The person operating a transient accommodation as defined in this chapter shall secure each year an annual operating license and shall pay a fee therefor in the sum of fifteen dollars. The annual licensure period shall run from January 1st through December 31st of each year. The license fee shall be paid to the department prior to the time the license is issued and such license shall be conspicuously displayed in the lobby or office of the facility for which it is issued. [1971 ex.s. c 239 § 3.]

70.62.230 Inspection fee. In addition to the annual license fee, the person operating a transient accommodation shall pay an annual inspection fee if an inspection is made during the course of the year in accordance with the following schedule:

3 to 24 lodging units	\$15.00
25 to 49 lodging units	25.00
50 to 74 lodging units	35.00
75 to 99 lodging units	50.00
100 to 199 lodging units	75.00
200 and up lodging units	100.00

Only one such inspection fee shall be charged during any calendar year regardless of the number of inspections which may be made. [1971 ex.s. c 239 § 4.]

70.62.240 Rules and regulations. The board shall promulgate such rules and regulations, to be effective no sooner than February 1, 1972, as may be necessary to assure that each transient accommodation will be operated and maintained in a manner consistent with the health and welfare of the members of the public using such facilities. Such rules and regulations shall provide for adequate light, heat, ventilation, cleanliness, and sanitation and shall include provisions to assure adequate maintenance. All rules and regulations and amendments thereto shall be adopted in conformance with the provisions of chapter 34.04 RCW. [1971 ex.s. c 239 § 5.]

70.62.250 Powers and duties of department. The department is hereby granted and shall have and exercise, in addition to the powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the power:

(1) To develop such rules and regulations for proposed adoption by the board as may be necessary to implement the purposes of this chapter;

(2) To enter and inspect at any reasonable time any transient accommodation and to make such investigations as are reasonably necessary to carry out the provisions of this chapter and any rules and regulations promulgated thereunder: *Provided*, That no room or suite shall be entered for inspection unless said room or suite is not occupied by any patron or guest of the transient accommodation at the time of entry;

(3) To perform such other duties and employ such personnel as may be necessary to carry out the provisions of this chapter; and

(4) To administer and enforce the provisions of this chapter and the rules and regulations promulgated thereunder by the board. [1971 ex.s. c 239 § 6.]

70.62.260 Licenses—Applications—Expiration—Renewal. No person shall operate a transient accommodation as defined in this chapter without having a valid license issued by the department. Applications for a license to operate a transient accommodation shall be filed with the department prior to July 1, 1971, and one-half of the annual license fee shall be included with the application. All licenses issued under the provisions of this chapter shall expire on the first day of January next succeeding the date of issue. All applications for renewal of licenses shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application. [1971 ex.s. c 239 § 7.]

70.62.270 Suspension or revocation of licenses. Licenses issued under this chapter may be suspended or revoked upon the failure or refusal of the person operating a transient accommodation to comply with the provisions of this chapter, or of any rules and regulations adopted by the board hereunder. All such proceedings shall be governed by the provisions of chapter 34.04 RCW. [1971 ex.s. c 239 § 8.]

70.62.280 Violations—Penalty. Any violation of this chapter or the rules and regulations promulgated hereunder by any person operating a transient accommodation shall be a misdemeanor and shall be punished as such. Each day of operation of a transient accommodation in violation of this chapter shall constitute a separate offense. [1971 1st ex.s. c 239 § 10.]

70.62.290 Fire and safety rules and regulations—Duties of state fire marshal. Rules and regulations establishing fire and life safety requirements, not inconsistent with the provisions of this chapter, shall continue to be promulgated and enforced by the state fire marshal's office. [1971 ex.s. c 239 § 11.]

70.62.900 Severability—1971 ex.s. c 239. If any section or any portion of any section of this 1971 amendatory act is found to be unconstitutional, the finding shall be to the individual section or portion of section specifically found to be unconstitutional and the balance of the act shall remain in full force and effect. [1971 ex.s. c 239 § 12.]

Chapter 70.70

SALE OR USE OF SHODDY

Sections
70.70.010
70.70.020
70.70.030
70.70.035

"Shoddy" defined.
Sale or use of shoddy—Restrictions.
Duty to enforce chapter—Right of entry.
Prosecution of cases.

70.70.040 Penalty.

Reviser's note—Sunset Act application: Regulation of the sale or use of shoddy is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.167. RCW 70.70.010 through 70.70.040 are scheduled for future repeal under RCW 43.131.168.

70.70.010 "Shoddy" defined. The term "shoddy", as used in this chapter, shall include all materials made or manufactured of rags, old clothing, burlap, old mattresses, quilts or pillows. [1909 c 56 § 2; RRS § 6133.]

Sunset Act application: See note following chapter digest.

70.70.020 Sale or use of shoddy—Restrictions. No person, firm or corporation shall, within this state, sell, offer for sale, or manufacture for sale, what is commonly known as shoddy, or use the same in the manufacture of mattresses, quilts, pillows, rugs, couches, lounges or bedding of any kind or description, unless such commodity has been first properly disinfected or in some other manner rendered free from pathogenic or disease bearing germs. [1909 c 56 § 1; RRS § 6132.]

Sunset Act application: See note following chapter digest.

70.70.030 Duty to enforce chapter—Right of entry. It shall be the duty of all departments of health, health officers, commissioners of health or officials discharging similar duties in the state of Washington to enforce the provisions of this chapter, and they shall have power, in the performance of their official duties, to enter any store or manufacturing establishment where the articles mentioned in RCW 70.70.010 are manufactured or are for sale and make such examination as they deem necessary in order to ascertain whether or not the provisions of this chapter are being violated. [1909 c 56 § 3; RRS § 6134.]

Sunset Act application: See note following chapter digest.

70.70.035 Prosecution of cases. It shall be the duty of the attorney general and prosecuting attorneys of the counties of this state to prosecute all cases arising under the provisions of this chapter. [1909 c 56 § 4; RRS § 6135.]

Sunset Act application: See note following chapter digest.

70.70.040 Penalty. Every person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. [1909 c 56 § 5; RRS § 6136.]

Sunset Act application: See note following chapter digest.

Chapter 70.74

WASHINGTON STATE EXPLOSIVES ACT

Sections

70.74.010

Definitions.

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70.74.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

The terms "authorized", "approved" or "approval" shall be held to mean authorized, approved, or approval by the department of labor and industries.

The term "blasting agent" shall be held to mean and include any material or mixture consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an explosive, and in which none of the ingredients are classified as an explosive, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated when unconfined by means of a No. 8 test blasting cap.

The term "explosive" or "explosives" whenever used in this chapter, shall be held to mean and include any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible

units, or other ingredients, in such proportions, quantities or packing, that an ignition by fire, by friction, by concussion, by percussion, or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. In addition, the term "explosives" shall include all material which is classified as class A, class B, and class C explosives by the federal department of transportation: *Provided*, That for the purposes of this chapter small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder not exceeding five pounds shall not be defined as explosives.

Classification of explosives shall include but not be limited to the following:

CLASS A EXPLOSIVES: (Possessing detonating hazard) dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, black powder exceeding five pounds, blasting caps in quantities of 1001 or more, and detonating primers.

CLASS B EXPLOSIVES: (Possessing flammable hazard) propellant explosives, including smokeless propellants exceeding fifty pounds.

CLASS C EXPLOSIVES: (Including certain types of manufactured articles which contain class A or class B explosives, or both, as components but in restricted quantities) blasting caps in quantities of 1000 or less.

The term "explosive-actuated power devices" shall be held to mean any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices.

The term "magazine", shall be held to mean and include any building or other structure, other than a factory building, used for the storage of explosives.

The term "inhabited building", shall be held to mean and include only a building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble, other than any building or structure occupied in connection with the manufacture, transportation, storage, or use of explosives.

The term "explosives manufacturing plant" shall be held to mean and include all lands, with the buildings situated thereon, used in connection with the manufacturing or processing of explosives or in which any process involving explosives is carried on, or the storage of explosives thereat, as well as any premises where explosives are used as a component part or ingredient in the manufacture of any article or device.

The term "explosives manufacturing building", shall be held to mean and include any building or other structure (excepting magazines) containing explosives, in which the manufacture of explosives, or any processing involving explosives, is carried on, and any building where explosives are used as a component part or ingredient in the manufacture of any article or device.

The term "railroad" shall be held to mean and include any steam, electric, or other railroad which carries passengers for hire.

The term "highway" shall be held to mean and include any public street, public alley, or public road.

The term "efficient artificial barricade" shall be held to mean an artificial mound or properly revetted wall of earth of a minimum thickness of not less than three feet or such other artificial barricade as approved by the department of labor and industries.

The term "person" shall be held to mean and include any individual, firm, copartnership, corporation, company, association, joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

The term "dealer" shall be held to mean and include any person who purchases explosives or blasting agents for the sole purpose of resale, and not for use or consumption.

The term "forbidden or not acceptable explosives" shall be held to mean and include explosives which are forbidden or not acceptable for transportation by common carriers by rail freight, rail express, highway, or water in accordance with the regulations of the federal department of transportation.

The term "handloader" shall be held to mean and include any person who engages in the noncommercial assembling of small arms ammunition for his own use, specifically the operation of installing new primers, powder, and projectiles into cartridge cases.

The term "handloader components" means small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder as used in muzzle loading firearms not exceeding five pounds.

The term "fuel" shall be held to mean and include a substance which may react with the oxygen in the air or with the oxygen yielded by an oxidizer to produce combustion.

The term "motor vehicle" shall be held to mean and include any self-propelled automobile, truck, tractor, semi-trailer or full trailer, or other conveyance used for the transportation of freight.

The term "natural barricade" shall be held to mean and include any natural hill, mound, wall, or barrier composed of earth or rock or other solid material of a minimum thickness of not less than three feet.

The term "oxidizer" shall be held to mean a substance that yields oxygen readily to stimulate the combustion of organic matter or other fuel.

The term "propellant-actuated power device" shall be held to mean and include any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

The term "public conveyance" shall be held to mean and include any railroad car, streetcar, ferry, cab, bus, airplane, or other vehicle which is carrying passengers for hire.

The term "public utility transmission system" shall mean power transmission lines over 10 KV, telephone cables, or microwave transmission systems, or buried or exposed pipelines carrying water, natural gas, petroleum, or crude oil, or refined products and chemicals, whose

services are regulated by the utilities and transportation commission, municipal, or other publicly owned systems.

The term "purchaser" shall be held to mean any person who buys, accepts, or receives any explosives or blasting agents.

The term "pyrotechnics" shall be held to mean and include any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects which are commonly referred to as fireworks.

The term "small arms ammunition" shall be held to mean and include any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges, incendiary, tracer, spotting, or pyrotechnic projectiles is excluded from this definition.

The term "small arms ammunition primers" shall be held to mean small percussion-sensitive explosive charges encased in a cup, used to ignite propellant powder and shall include percussion caps as used in muzzle loaders.

The term "smokeless propellants" shall be held to mean and include solid chemicals or solid chemical mixtures in excess of fifty pounds which function by rapid combustion.

The term "user" shall be held to mean and include any natural person, manufacturer, or blaster who acquires, purchases, or uses explosives as an ultimate consumer or who supervises such use.

Words used in the singular number shall include the plural, and the plural the singular. [1972 ex.s. c 88 § 5; 1970 ex.s. c 72 § 1; 1969 ex.s. c 137 § 3; 1931 c 111 § 1; RRS § 5440-1.]

Severability—1931 c 111: "In case any provision of this act shall be adjudged unconstitutional, or void for any other reason, such adjudication shall not affect any of the other provisions of this act." [1931 c 111 § 19.]

70.74.020 Restrictions on manufacture, sale, or storage—Users—Reports on storage—Waiver. No person shall manufacture, possess, store, sell, purchase, transport, or use explosives or blasting agents except in compliance with this chapter.

The director of the department of labor and industries shall make and promulgate rules and regulations concerning qualifications of users of explosives and shall have the authority to issue licenses for users of explosives to effectuate the purpose of this chapter: *Provided*, That where there is a finding by the director that the use or disposition of explosives in any class of industry presents no unusual hazard to the safety of life or limb of persons employed therewith, and where the users are supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a license for such use under this chapter, the director in his discretion may exclude said users in those classes of industry from individual licensing.

The director of the department of labor and industries shall make and promulgate rules and regulations concerning the manufacture, sale, purchase, use, transportation, storage, and disposal of explosives, and shall have the authority to issue licenses for the manufacture, purchase, sale, use, transportation, and storage of explosives to effectuate the purpose of this chapter. The director of the department of labor and industries is hereby delegated the authority to grant written waiver of this chapter whenever it can be shown that the manufacturing, handling, or storing of explosives are in compliance with applicable national or federal explosive safety standards: *Provided*, That any resident of this state who is qualified to purchase explosives in this state and who has complied with the provisions of this chapter applicable to him may purchase explosives from an authorized dealer of a bordering state and may transport said explosives into this state for use herein: *Provided further*, That residents of this state shall, within ten days of the date of purchase, present to the department of labor and industries a report signed by both vendor and vendee of every purchase from an out of state dealer, said report indicating the date of purchase, name of vendor, vendor's license number, vendor's business address, amount and kind of explosives purchased, the name of the purchaser, the purchaser's license number, and the name of receiver if different than purchaser.

It shall be unlawful to sell, give away or otherwise dispose of, or deliver to any person under twenty-one years of age any explosives other than small arms ammunition and handloader components, whether said person is acting for himself or for any other person: *Provided*, That if there is a finding by the director that said use or disposition of explosives poses no unusual hazard to the safety of life or limb in any class of industry, where persons eighteen years of age or older are employed as users, and where said persons are adequately trained and adequately supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a valid license for such use under this chapter, the director in his discretion may exclude said persons in that class of industry from said minimum age requirement.

All persons engaged in keeping, using or storing any compound, mixture or material, in wet condition, or otherwise, which upon drying out or undergoing other physical changes, may become an explosive within the definition of RCW 70.74.010, shall report in writing subscribed to by such person or his agent, to the department of labor and industries, report blanks to be furnished by such department, and such reports to require:

- (1) The kind of compound, mixture or material kept or stored, and maximum quantity thereof.
- (2) Condition or state of compound, mixture or material.
- (3) Place where kept or stored.

The department of labor and industries may at any time cause an inspection to be made to determine whether the condition of the compound, mixture or material is as reported. [1972 ex.s. c 88 § 6; 1969 ex.s. c 137 § 4; 1967 c 99 § 1; 1931 c 111 § 2; RRS § 5440-2.]

70.74.025 Magazines—Classification, location and construction—Standards—Use. The director of the department of labor and industries shall establish by rule or regulation requirements for classification, location and construction of magazines for storage of explosives in compliance with accepted applicable explosive safety standards. All explosives shall be kept in magazines which meet the requirements of this chapter. [1969 ex.s. c 137 § 9.]

70.74.030 Quantity and distance table for storage—Exceptions. All explosive manufacturing buildings and magazines in which explosives or blasting agents except small arms ammunition and smokeless powder are had, kept, or stored, must be located at distances from inhabited buildings, railroads, highways, and public utility transmission systems in conformity with the following quantity and distance tables, and these tables shall be the basis on which applications for license for storage shall be made and license for storage issued, as provided in RCW 70.74.110 and 70.74.120. All distances prescribed in the following quantity and distance tables are unbarricaded, and, if there is an efficient artificial barricade or a natural barricade between the explosives manufacturing building or magazine and another explosives manufacturing building or magazine, building, railroad, highway, or public utility transmission system, the distance prescribed in the following quantity and distance tables may be reduced by one-half. Blasting and electric blasting caps in strength through No. 8 must be rated as one and one-half pounds of explosives per one thousand caps. Blasting and electric blasting caps of strength higher than No. 8 must be computed on the combined weight of explosives.

The quantity and distance table governing the manufacture, keeping and storage of explosives to be as follows:

QUANTITY AND DISTANCE TABLE

EXPLOSIVES		Column 2	Column 3	Column 4
Pounds Over	Pounds Not Over	Distance from Nearest Inhabited Building	Distance From Nearest Railroad	Distance from Nearest Highway and Public Utility Transmission System
		Feet	Feet	Feet
2	5	140	60	60
5	10	180	70	70
10	20	220	90	90
20	30	250	100	100
30	40	280	110	110
40	50	300	120	120
50	75	340	140	140
75	100	380	150	150
100	125	400	160	160
125	150	430	170	170
150	200	470	190	190
200	250	510	210	210
250	300	540	220	220
300	400	590	240	240
400	500	640	260	260
500	600	680	270	270

EXPLOSIVES		Column 2	Column 3	Column 4
Pounds Over	Pounds Not Over	Distance from Nearest Inhabited Building	Distance From Nearest Railroad	Distance from Nearest Highway and Public Utility Transmission System
		Feet	Feet	Feet
600	700	710	290	290
700	800	750	300	300
800	900	780	310	310
900	1,000	800	320	320
1,000	1,200	850	340	330
1,200	1,400	900	360	340
1,400	1,600	940	380	350
1,600	1,800	980	390	360
1,800	2,000	1,010	410	370
2,000	2,500	1,090	440	380
2,500	3,000	1,160	470	390
3,000	4,000	1,270	510	420
4,000	5,000	1,370	550	450
5,000	6,000	1,460	590	470
6,000	7,000	1,540	620	490
7,000	8,000	1,600	640	500
8,000	9,000	1,670	670	510
9,000	10,000	1,730	690	520
10,000	12,000	1,750	740	540
12,000	14,000	1,770	780	550
14,000	16,000	1,800	810	560
16,000	18,000	1,880	840	570
18,000	20,000	1,950	870	580
20,000	25,000	2,110	940	630
25,000	30,000	2,260	1,000	680
30,000	35,000	2,410	1,050	720
35,000	40,000	2,550	1,100	760
40,000	45,000	2,680	1,140	800
45,000	50,000	2,800	1,180	840
50,000	55,000	2,920	1,220	880
55,000	60,000	3,030	1,260	910
60,000	65,000	3,130	1,290	940
65,000	70,000	3,220	1,320	970
70,000	75,000	3,310	1,350	1,000
75,000	80,000	3,390	1,380	1,020
80,000	85,000	3,460	1,410	1,040
85,000	90,000	3,520	1,440	1,060
90,000	95,000	3,580	1,460	1,080
95,000	100,000	3,630	1,490	1,090
100,000	110,000	3,670	1,540	1,100
110,000	120,000	3,710	1,580	1,110
120,000	130,000	3,750	1,620	1,120
130,000	140,000	3,780	1,670	1,130
140,000	150,000	3,800	1,700	1,140
150,000	160,000	3,870	1,740	1,160
160,000	170,000	3,930	1,780	1,180
170,000	180,000	3,980	1,810	1,200
180,000	190,000	4,020	1,840	1,210
190,000	200,000	4,060	1,870	1,220
200,000	210,000	4,110	1,910	1,240
210,000	230,000	4,200	1,960	1,270
230,000	250,000	4,310	2,020	1,300
250,000	275,000	4,430	2,080	1,340
275,000	300,000	4,550	2,150	1,380

[1972 ex.s. c 88 § 7; 1969 ex.s. c 137 § 10; 1931 c 111 § 5; RRS § 5440-5.]

70.74.040 Limit on storage quantity. No quantity in excess of three hundred thousand pounds, or the equivalent in blasting caps shall be had, kept or stored in any factory building or magazine in this state. [1970 ex.s. c 72 § 2; 1931 c 111 § 4; RRS § 5440-4.]

70.74.050 Quantity and distance table for explosives manufacturing buildings. All explosives manufacturing buildings shall be located one from the other and from other buildings on explosives manufacturing plants in which persons are regularly employed, and all magazines shall be located from factory buildings and buildings on explosives plants in which persons are regularly employed, in conformity with the intraexplosives plant quantity and distance table below set forth:

EXPLOSIVES		
Pounds Over	Pounds Not Over	Distance Feet
		Separate Building or Within Substantial Dividing Walls
.....	10	
10	25	40
25	50	60
50	100	80
100	200	100
200	300	120
300	400	130
400	500	140
500	750	160
750	1,000	180
1,000	1,500	210
1,500	2,000	230
2,000	3,000	260
3,000	4,000	280
4,000	5,000	300
5,000	6,000	320
6,000	7,000	340
7,000	8,000	360
8,000	9,000	380
9,000	10,000	400
10,000	12,500	420
12,500	15,000	450
15,000	17,500	470
17,500	20,000	490
20,000	25,000	530
25,000	30,000	560
30,000	35,000	590
35,000	40,000	620
40,000	45,000	640
45,000	50,000	660
50,000	55,000	680
55,000	60,000	700
60,000	65,000	720
65,000	70,000	740
70,000	75,000	770
75,000	80,000	780
80,000	85,000	790
85,000	90,000	800
90,000	95,000	820
95,000	100,000	830
100,000	125,000	900
125,000	150,000	950
150,000	175,000	1,000
175,000	200,000	1,050
200,000	225,000	1,100
225,000	250,000	1,150

[1972 ex.s. c 88 § 8; 1931 c 111 § 5; RRS § 5440-5.]

70.74.061 Quantity and distance table for separation between magazines. Magazines containing blasting caps and electric blasting caps shall be separated from other magazines containing like contents, or from magazines

containing explosives by distances based on the following:

(1) Blasting caps in strengths through No. 8 should be rated at one and one-half pounds of explosive per one thousand caps;

(2) For strengths higher than No. 8, use the total combined weight of explosives;

(3) Magazines in which explosives are kept and stored shall be detached from other structures and separated from other magazines in conformity with the quantity and distance table set forth below:

QUANTITY AND DISTANCE TABLE FOR SEPARATION BETWEEN MAGAZINES CONTAINING EXPLOSIVES

Pounds Over	Pounds Not Over	Separation Distance in Feet Between Magazines	
		Not Barricaded	Barricaded
2	5	12	6
5	10	16	8
10	20	20	10
20	30	22	11
30	40	24	12
40	50	28	14
50	75	30	15
75	100	32	16
100	125	36	18
125	150	38	19
150	200	42	21
200	250	46	23
250	300	48	24
300	400	54	27
400	500	58	29
500	600	62	31
600	700	64	32
700	800	66	33
800	900	70	35
900	1,000	72	36
1,000	1,200	78	39
1,200	1,400	82	41
1,400	1,600	86	43
1,600	1,800	88	44
1,800	2,000	90	45
2,000	2,500	98	49
2,500	3,000	104	52
3,000	4,000	116	58
4,000	5,000	122	61
5,000	6,000	130	65
6,000	7,000	136	68
7,000	8,000	144	72
8,000	9,000	150	75
9,000	10,000	156	78
10,000	12,000	164	82
12,000	14,000	174	87
14,000	16,000	180	90
16,000	18,000	188	94
18,000	20,000	196	98
20,000	25,000	210	105
25,000	30,000	224	112
30,000	35,000	238	119
35,000	40,000	248	124
40,000	45,000	258	129
45,000	50,000	270	135
50,000	55,000	280	140
55,000	60,000	290	145
60,000	65,000	300	150
65,000	70,000	310	155
70,000	75,000	320	160
75,000	80,000	330	165
80,000	85,000	340	170
85,000	90,000	350	175

Pounds Over	Pounds Not Over	Separation Distance in Feet Between Magazines	
		Not Barricaded	Barricaded
90,000	95,000	360	180
95,000	100,000	370	185
100,000	110,000	380	195
110,000	120,000	410	205
120,000	130,000	430	215
130,000	140,000	450	225
140,000	150,000	470	235
150,000	160,000	490	245
160,000	170,000	510	255
170,000	180,000	530	265
180,000	190,000	550	275
190,000	200,000	570	285
200,000	210,000	590	295
210,000	230,000	630	315
230,000	250,000	670	335
250,000	275,000	720	360
275,000	300,000	770	385

[1969 ex.s. c 137 § 11.]

70.74.100 Storage of caps with explosives prohibited.

No blasting caps, or other detonating or fulminating caps, or detonators, or flame-producing devices shall be kept or stored in any magazine in which other explosives are kept or stored. [1969 ex.s. c 137 § 12; 1931 c 111 § 10; RRS § 5440-10.]

70.74.110 Manufacturer's report—Inspection—

License. All persons engaged in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device, on the date when this 1969 amendatory act takes effect, shall within sixty days thereafter, and all persons engaging in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device after this act takes effect shall, before so engaging, make an application in writing, subscribed to by such person or his agent, to the department of labor and industries, the application stating:

- (1) Location of place of manufacture or processing;
- (2) Kind of explosives manufactured, processed or used;
- (3) The distance that such explosives manufacturing building is located or intended to be located from the other factory buildings, magazines, inhabited buildings, railroads and highways and public utility transmission systems;
- (4) The name and address of the applicant;
- (5) The reason for desiring to manufacture explosives;
- (6) The applicant's citizenship, if the applicant is an individual;
- (7) If the applicant is a partnership, the names and addresses of the partners, and their citizenship;
- (8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof, and their citizenship; and
- (9) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

There shall be kept in the main office on the premises of each explosives manufacturing plant a plan of said plant showing the location of all explosives manufacturing buildings and the distance they are located from other factory buildings where persons are employed and from magazines, and these plans shall at all times be open to inspection by duly authorized inspectors of the department of labor and industries. The superintendent of each plant shall upon demand of said inspector furnish the following information:

(a) The maximum amount and kind of explosive material which is or will be present in each building at one time.

(b) The nature and kind of work carried on in each building and whether or not said buildings are surrounded by natural or artificial barricades.

The department of labor and industries shall as soon as may be after receiving such application cause an inspection to be made of the explosives manufacturing plant, and if found to be in accordance with RCW 70.74.030 and 70.74.050 and RCW 70.74.061, such department shall issue a license to the person applying therefor showing compliance with the provisions of this chapter, unless the department shall find that the applicant or the officers, agents or employees of the applicant are not sufficiently experienced in the manufacture of explosives, have been convicted of a crime involving moral turpitude, or are disloyal to the United States. Such license shall continue in full force and effect until surrendered or canceled, because of failure to comply with any of the conditions necessary for the granting of a license. [1969 ex.s. c 137 § 13; 1941 c 101 § 1; 1931 c 111 § 11; Rem. Supp. 1941 § 5440-1.]

Effective date—1969 ex.s. c 137: The effective date of 1969 ex.s. c 137 was August 11, 1969.

70.74.120 Storage report—Inspection—License—Cancellation. All persons engaged in keeping or storing and all persons having in their possession explosives on the date when this 1969 amendatory act takes effect shall within sixty days thereafter, and all persons engaging in keeping or storing explosives or coming into possession thereof after this act takes effect, shall before engaging in the keeping or storing of explosives or taking possession thereof, make an application in writing subscribed to by such person or his agent, to the department of labor and industries stating:

- (1) The location of the magazine, if any, if then existing, or in case of a new magazine, the proposed location of such magazine;
- (2) The kind of explosives that are kept or stored or possessed or intended to be kept or stored or possessed and the maximum quantity that is intended to be kept or stored or possessed thereat;
- (3) The distance that such magazine is located or intended to be located from other magazines, inhabited buildings, explosives manufacturing buildings, railroads, highways and public utility transmission systems;
- (4) The name and address of the applicant;
- (5) The reason for desiring to store or possess explosives;

(6) The citizenship of the applicant if the applicant is an individual;

(7) If the applicant is a partnership, the names and addresses of the partners and their citizenship;

(8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship;

(9) And such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall, as soon as may be after receiving such application, cause an inspection to be made of the magazine, if then constructed, and, in the case of a new magazine, as soon as may be after same is found to be constructed in accordance with the specification provided in RCW 70.74.025, such department shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance tables set forth in RCW 70.74.030, 70.74.050 and 70.74.061, and shall issue a license to the person applying therefor, unless the department shall find that such applicant is not sufficiently experienced in the handling of explosives, lacks suitable facilities therefor, has been convicted of a crime involving moral turpitude, or is disloyal to the United States. Said license shall set forth the maximum quantity of explosives that may be had, kept or stored by said person. Such license shall be valid until canceled for one or more of the causes hereinafter provided. Whenever by reason of change in the physical conditions surrounding said magazine at the time of the issuance of the license therefor, such as:

(a) The erection of buildings nearer said magazine;

(b) The construction of railroads nearer said magazine;

(c) The opening for public travel of highways nearer said magazine; or

(d) The construction of public utilities transmission systems near said magazine; then the amounts of explosives which may be lawfully had, kept or stored in said magazine must be reduced to conform to such changed conditions in accordance with the quantity and distance table notwithstanding the license, and the department of labor and industries shall modify or cancel such license in accordance with the changed conditions. Said license may also be canceled if the department of labor and industries shall find that the applicant is keeping explosives for an unlawful purpose or is disloyal to the United States. Whenever any person to whom a license has been issued, keeps or stores in the magazine or has in his possession, any quantity of explosives in excess of the maximum amount set forth in said license, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the department is authorized to cancel such license. Whenever a license is canceled by the department for any cause herein specified, the department shall notify the person to whom such license is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within ten days from the giving of said notice, or, if the cause of cancellation be the failure to pay the annual license fee, or the

fact that explosives are kept for an unlawful purpose, or the applicant is disloyal to the United States, the department of labor and industries shall order such person to dispossess himself of said explosives within ten days from the giving of said notice. Failure to remove the explosives stored in said magazine or to dispossess oneself of the explosives as herein provided within the time specified in said notice shall constitute a violation of this chapter. [1969 ex.s. c 137 § 14; 1941 c 101 § 2; 1931 c 111 § 12; Rem. Supp. 1941 § 5440-12.]

Effective date—1969 ex.s. c 137: The effective date of 1969 ex.s. c 137 was August 11, 1969.

70.74.130 Dealer in explosives—Application—License—Cancellation. Every person desiring to engage in the business of dealing in explosives shall apply to the department of labor and industries for a license therefor. Said application shall state, among other things:

(1) The name and address of applicant;

(2) The reason for desiring to engage in the business of dealing in explosives;

(3) Citizenship, if an individual applicant;

(4) If a partnership, the names and addresses of the partners and their citizenship;

(5) If an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and

(6) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall issue the license applied for unless the department finds that either the applicant or any of the officers, agents or employees of the applicant are not sufficiently experienced in the business of dealing in explosives, lack suitable facilities therefor, have been convicted of a crime involving moral turpitude, or are disloyal to the United States. Said license may be canceled for any cause that would prevent the initial issuance thereof. [1969 ex.s. c 137 § 16; 1941 c 101 § 3; Rem. Supp. 1941 § 5440-12a.]

70.74.135 Purchaser of explosives—Application—License—Issuance—Cancellation. All persons desiring to purchase explosives except handloader components shall apply to the department of labor and industries for a license. Said application shall state, among other things:

(1) The location where explosives are to be used;

(2) The kind and amount of explosives to be used;

(3) The name and address of the applicant;

(4) The reason for desiring to use explosives;

(5) The citizenship of the applicant if the applicant is an individual;

(6) If the applicant is a partnership, the names and addresses of the partners and their citizenship;

(7) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and

(8) Such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall issue the license applied for unless the department finds that either the applicant or any of the officers, agents or employees of the applicant are not sufficiently experienced in the use of explosives, lack suitable facilities therefor, have been convicted of a felony involving force or violence, or are disloyal to the United States. Said license may be canceled for any cause that would prevent the initial issuance thereof; or for any violation of this chapter. [1971 ex.s. c 302 § 7; 1970 ex.s. c 72 § 3; 1969 ex.s. c 137 § 18.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.74.137 Purchaser's license fee. Every person applying for a purchaser's license, or renewal thereof, shall pay an annual license fee of two dollars. Said license fee shall accompany the application, and be by the department turned over to the state treasurer: *Provided*, That if the applicant is denied a purchaser's license the license fee shall be returned to said applicant by registered mail. [1972 ex.s. c 88 § 2.]

70.74.140 Storage license fee. Every person engaging in the business of keeping or storing of explosives, shall pay an annual license fee for each magazine maintained, to be graduated by the department of labor and industries according to the quantity kept or stored therein, of not less than one dollar nor more than fifty dollars. Said license fee shall accompany the application, and be by the department turned over to the state treasurer. [1969 ex.s. c 137 § 15; 1931 c 111 § 13; RRS § 5440-13.]

70.74.142 User's license or renewal—Fee. Every person applying for a user's license, or renewal thereof, under this chapter shall pay an annual license fee of three dollars. Said license fee shall accompany the application, and be turned over by the department to the state treasurer: *Provided*, That if the applicant is denied a user's license the license fee shall be returned to said applicant by registered mail. [1972 ex.s. c 88 § 1.]

70.74.150 Annual inspection. The department of labor and industries shall make, or cause to be made, at least one inspection during every year, of each licensed explosives plant or magazine. [1931 c 111 § 14; RRS § 5440-14.]

70.74.160 Unlawful access to explosives. No person, except an official as authorized herein or a person authorized to do so by the owner thereof, or his agent, shall enter any explosives manufacturing building, magazine or car, vehicle or other common carrier containing explosives in this state. [1969 ex.s. c 137 § 19; 1931 c 111 § 15; RRS § 5440-15.]

70.74.170 Discharge of firearms or igniting flame near explosives. No person shall discharge any firearms at or against any magazine or explosives manufacturing buildings or ignite any flame or flame-producing device nearer than two hundred feet from said magazine or explosives manufacturing building. [1969 ex.s. c 137 § 20; 1931 c 111 § 16; RRS § 5440-16.]

70.74.180 Explosive devices prohibited—Penalty.

Any person who shall have in his possession or control any shell, bomb or similar device, charged or filled with one or more explosives, intending to use the same or cause same to be used for an unlawful purpose, shall be deemed guilty of a felony, and upon conviction, shall be punished by imprisonment in a state prison for a term of not less than five years nor more than twenty-five years. [1969 ex.s. c 137 § 21; 1931 c 111 § 18; RRS § 5440-18.]

70.74.191 Exemptions. The laws contained in this chapter and the ensuing regulations prescribed by the department of labor and industries shall not apply to:

(1) Explosives or blasting agents in the course of transportation by way of railroad, water, highway or air under the jurisdiction of, and in conformity with, regulations adopted by the federal department of transportation, the Washington state utilities and transportation commission and the Washington state patrol;

(2) The laboratories of schools, colleges and similar institutions if confined to the purpose of instruction or research and if not exceeding the quantity of one pound;

(3) Explosives in the forms prescribed by the official United States Pharmacopoeia;

(4) The transportation, storage and use of explosives or blasting agents in the normal and emergency operations of federal agencies and departments including the regular United States military departments on military reservations, or the duly authorized militia of any state or territory, or to emergency operations of any state department or agency, any police, or any municipality or county;

(5) The sale and use of fireworks, signaling devices, flares, fuses, and torpedoes;

(6) Any violation under this chapter if any existing ordinance of any city, municipality or county is more stringent than this chapter. [1969 ex.s. c 137 § 5.]

70.74.201 Municipal or county ordinances unaffected—State preemption. This chapter shall not affect, modify or limit the power of a city, municipality or county in this state to make an ordinance that is more stringent than this chapter which is applicable within their respective corporate limits or boundaries: *Provided*, That the state shall be deemed to have preempted the field of regulation of small arms ammunition and hand-loader components. [1970 ex.s. c 72 § 5; 1969 ex.s. c 137 § 6.]

70.74.210 Coal mining code unaffected. All acts and parts of acts inconsistent with this act are hereby repealed: *Provided, however*, That nothing in this act shall be construed as amending, limiting, or repealing any provision of chapter 36, session laws of 1917, known as the coal mining code. [1931 c 111 § 22; RRS § 5440-22.]

Coal mining code: Chapter 78.40 RCW.

70.74.220 Penalty. Except as otherwise provided by the specific penalty provisions in this chapter, whoever fails to comply with or violates any of the provisions of

this chapter shall be guilty of a gross misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars. [1969 ex.s. c 137 § 7; 1931 c 111 § 17; RRS § 5440-17.]

70.74.230 Shipments out of state—Dealer's records. If any manufacturer of explosives or dealer therein shall have shipped any explosives into another state, and the laws of such other state shall designate an officer or agency to regulate the possession, receipt or storage of explosives, and such officer or agency shall so require, such manufacturer shall, at least once each calendar month, file with such officer or agency of such other state a report giving the names of all purchasers and the amount and description of all explosives sold or delivered in such other state. Dealers in explosives shall keep a record of all explosives purchased or sold by them, which record shall include the name and address of each vendor and vendee, the date of each sale or purchase, and the amount and kind of explosives sold or purchased. Such records shall be open for inspection by the duly authorized agents of the department of labor and industries and by all federal, state and local law enforcement officers at all times, and a copy of such record shall be furnished once each calendar month to the department of labor and industries in such form as said department shall prescribe. [1941 c 101 § 4; Rem. Supp. 1941 § 5440-23.]

70.74.240 Sale to unlicensed person prohibited. No dealer shall sell, barter, give or dispose of explosives to any person who does not hold a license to purchase explosives issued under the provisions of this chapter. [1970 ex.s. c 72 § 4; 1969 ex.s. c 137 § 17; 1941 c 101 § 5; Rem. Supp. 1941 § 5440-24.]

70.74.250 Blasting near fur farms and hatcheries. Between the dates of January 15th and June 15th of each year it shall be unlawful for any person to do, or cause to be done, any blasting within fifteen hundred feet from any fur farm or commercial hatchery except in case of emergency without first giving to the person in charge of such farm or hatchery twenty-four hours notice: *Provided, however,* That in the case of an established quarry and sand and gravel operations, and where it is necessary for blasting to be done continually, the notice required in this section may be made at the beginning of the period each year when blasting is to be done. [1941 c 107 § 1; Rem. Supp. 1941 § 5440-25.]

70.74.270 Endangering life and property by explosives—Penalty. Every person who shall maliciously place any explosive substance or material in, upon, under, against or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, in such manner or under such circumstances as to destroy or injure the same if exploded, shall be guilty of a felony, and if the circumstances and surroundings are such that the safety of any person might be endangered by the explosion thereof, shall be punished by imprisonment in the state penitentiary for not

more than twenty-five years. [1971 ex.s. c 302 § 8; 1969 ex.s. c 137 § 23; 1909 c 249 § 400; RRS § 2652.]

70.74.280 Damaging building, etc., by explosion—Penalty. Every person who shall maliciously, by the explosion of gunpowder or any other explosive substance or material, destroy or damage any building, car, airplane, vessel, common carrier, railroad track, public utility transmission system or structure, shall be punished as follows:

(1) If thereby the life or safety of a human being is endangered, by imprisonment in the state penitentiary for not more than twenty-five years;

(2) In every other case by imprisonment in the state penitentiary for not more than five years. [1971 ex.s. c 302 § 9; 1969 ex.s. c 137 § 24; 1909 c 249 § 401; RRS § 2653.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.74.290 Keeping explosives unlawfully—Penalty. Every person who shall make or keep any explosive in any city or village, or carry it through the streets thereof in a quantity, or manner prohibited by law, or by ordinance of such municipality; and every person who, by careless, negligent or unauthorized use or management of any such explosive, shall injure or cause injury to the person or property of another, shall be guilty of a gross misdemeanor. [1969 ex.s. c 137 § 25; 1909 c 249 § 252; RRS § 2504.]

70.74.295 Abandonment of explosives. It shall be unlawful for any person to abandon explosives or explosive substances. [1972 ex.s. c 88 § 3.]

70.74.297 Separate storage of components capable of detonation when mixed. Any two components which, when mixed, become capable of detonation by a No. 6 cap must be stored in separate locked containers or in a licensed, approved magazine. [1972 ex.s. c 88 § 4.]

70.74.300 Explosive containers to be marked—Penalty. Every person who shall put up for sale, or who shall deliver to any warehouseman, dock, depot, or common carrier any package, cask or can containing any explosive, nitroglycerin, dynamite, or powder, without having been properly labeled thereon to indicate its explosive classification, shall be guilty of a gross misdemeanor. [1969 ex.s. c 137 § 26; 1909 c 249 § 254; RRS § 2506.]

Reviser's note: Caption for 1909 c 249 § 254 reads as follows: "Sec. 254. *Transporting Explosives.*"

70.74.310 Gas bombs, explosives, stink bombs, etc. Any person other than a lawfully constituted peace officer of this state who shall deposit, leave, place, spray, scatter, spread or throw in any building, or any place, or who shall counsel, aid, assist, encourage, incite or direct any other person or persons to deposit, leave, place, spray, scatter, spread or throw, in any building or place, or who shall have in his possession for the purpose of, and with the intent of depositing, leaving, placing, spraying, scattering, spreading or throwing, in any

building or place, or of counseling, aiding, assisting, encouraging, inciting or directing any other person or persons to deposit, leave, place, spray, scatter, spread or throw, any stink bomb, stink paint, tear bomb, tear shell, explosive or flame-producing device, or any other device, material, chemical or substance, which, when exploded or opened, or without such exploding or opening, by reason of its offensive and pungent odor, does or will annoy, injure, endanger or inconvenience any person or persons, shall be guilty of a gross misdemeanor: *Provided*, That this section shall not apply to persons in the military service, actually engaged in the performance of military duties, pursuant to orders from competent authority nor to any property owner or person acting under his authority in providing protection against the commission of a felony. [1969 ex.s. c 137 § 27; 1927 c 245 § 1; RRS § 2504-1.]

70.74.320 Small arms ammunition, primers and propellants—Transportation regulations. The federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants are hereby adopted in this chapter by reference.

The director of the department of labor and industries has the authority to issue future regulations in accordance with amendments and additions to the federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants. [1969 ex.s. c 137 § 28.]

70.74.330 Small arms ammunition, primers and propellants—Separation from flammable materials. Small arms ammunition shall be separated from flammable liquids, flammable solids and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet. [1969 ex.s. c 137 § 29.]

70.74.340 Small arms ammunition, primers and propellants—Transportation, storage and display requirements. Quantities of small arms smokeless propellant (class B) in shipping containers approved by the federal department of transportation not in excess of fifty pounds may be transported in a private vehicle.

Quantities in excess of twenty-five pounds but not to exceed fifty pounds in a private passenger vehicle shall be transported in an approved magazine as specified by the department of labor and industries rules and regulations.

Transportation of quantities in excess of fifty pounds is prohibited in passenger vehicles: *Provided*, That this requirement shall not apply to duly licensed dealers.

Transportation of quantities in excess of fifty pounds shall be in accordance with federal department of transportation regulations.

Small arms smokeless propellant intended for personal use in quantities not to exceed twenty-five pounds may be stored without restriction in residences; quantities

over twenty-five pounds but not to exceed fifty pounds shall be stored in a strong box or cabinet constructed with three-fourths inch plywood (minimum), or equivalent, on all sides, top, and bottom.

Black powder as used in muzzle loading firearms may be transported in a private vehicle or stored without restriction in private residences in quantities not to exceed five pounds.

Not more than seventy-five pounds of small arms smokeless propellant, in containers of one pound maximum capacity may be displayed in commercial establishments.

Not more than twenty-five pounds of black powder as used in muzzle loading firearms may be stored in commercial establishments of which not more than four pounds in containers of one pound maximum capacity may be displayed.

Quantities in excess of one hundred fifty pounds of smokeless propellant or twenty-five pounds of black powder as used in muzzle loading firearms shall be stored in magazines constructed as specified in the rules and regulations for construction of magazines, and located in compliance with this chapter.

All small arms smokeless propellant when stored shall be packed in federal department of transportation approved containers. [1970 ex.s. c 72 § 6; 1969 ex.s. c 137 § 30.]

70.74.350 Small arms ammunition, primers and propellants—Primers, transportation and storage requirements. Small arms ammunition primers shall not be transported or stored except in the original shipping container approved by the federal department of transportation.

Truck or rail transportation of small arms ammunition primers shall be in accordance with the federal regulation of the United States department of transportation.

No more than twenty-five thousand small arms ammunition primers shall be transported in a private passenger vehicle: *Provided*, That this requirement shall not apply to duly licensed dealers.

Quantities not to exceed ten thousand small arms ammunition primers may be stored in a residence.

Small arms ammunition primers shall be separate from flammable liquids, flammable solids, and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet.

Not more than seven hundred fifty thousand small arms ammunition primers shall be stored in any one building except as next provided; no more than one hundred thousand shall be stored in any one pile, and piles shall be separated by at least fifteen feet.

Quantities of small arms ammunition primers in excess of seven hundred fifty thousand shall be stored in magazines in accordance with RCW 70.74.025. [1969 ex.s. c 137 § 31.]

Chapter 70.75
FIRE FIGHTING EQUIPMENT—
STANDARDIZATION

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70.75.900	Severability—1967 c 152.

70.75.010 Standard thread specified—Exceptions. All equipment for fire protection purposes, other than for forest fire fighting, purchased by state and municipal authorities, or any other authorities having charge of public property, shall be equipped with the standard threads designated as the national standard thread as adopted by the American Insurance Association and defined in its pamphlet No. 194, dated 1963: *Provided*, That this section shall not apply to steamer connections on fire hydrants. [1967 c 152 § 1.]

70.75.020 Duties of state fire marshal. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the state fire marshal. He shall provide the appliances necessary for carrying on this work, shall proceed with such standardization as rapidly as possible, and shall require the completion of such work within a period of five years from June 8, 1967: *Provided*, That the state fire marshal may exempt special purpose fire equipment and existing fire protection equipment from standardization when it is established that such equipment is not essential to the coordination of public fire protection operations. [1967 c 152 § 2.]

State fire marshal: Chapter 48.48 RCW.

70.75.030 Duties of state fire marshal—Notification of industrial establishments and property owners having equipment. The state fire marshal shall notify industrial establishments and property owners having equipment, which may be necessary for fire department use in protecting the property or putting out fire, of any changes necessary to bring their equipment up to the requirements of the standard established by RCW 70.75.020, and shall render such assistance as may be available for converting substandard equipment to meet standard specifications and requirements. [1967 c 152 § 3.]

70.75.040 Sale of nonstandard equipment as misdemeanor—Exceptions. Any person who, without approval of the state fire marshal, sells or offers for sale in Washington any fire hose, fire engine or other equipment for fire protection purposes which is fitted or equipped with other than the standard thread is guilty of a misdemeanor: *Provided*, That fire equipment for special purposes, research, programs, forest fire fighting, or special features of fire protection equipment found appropriate for uniformity within a particular protection

area may be specifically exempted from this requirement by order of the state fire marshal. [1967 c 152 § 4.]

70.75.900 Severability—1967 c 152. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 152 § 5.]

Chapter 70.77
STATE FIREWORKS LAW

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70.77.910	Severability—1961 c 228.

Sale or gift of pistol or toy pistol to minors under eighteen years of age is misdemeanor: RCW 26.28.080.

State building code: Chapter 19.27 RCW.

70.77.120 Definitions—To govern chapter. The definitions set forth in this chapter shall govern the construction of this chapter, unless the context otherwise requires. [1961 c 228 § 1.]

70.77.125 Definitions—"Fireworks". "Fireworks" means blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, fire balloons (balloons of a type which have burning material of any kind attached thereto or which require fire underneath to propel them), firecrackers, torpedoes, skyrockets, rockets, Roman candles, daygo bombs, or other fireworks of like construction and any fireworks containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, but does not include toy pistols, toy canes, toy guns, or other similar devices in which paper caps containing not more than twenty-five hundredths grain of explosive compound per cap are used. Nothing herein shall be deemed to prohibit the use of any explosive or flammable compound, blasting caps and similar items used for industrial purposes. [1961 c 228 § 2.]

70.77.130 Definitions—"Dangerous fireworks". "Dangerous fireworks" includes any of the following:

(1) Pyrotechnics or fireworks containing phosphorous, sulphocyanide, mercury, magnesium, potassium picrate, gallic acid, chlorate of potash and sulfur or chlorate of potash and sugar;

(2) Firecrackers, salutes, and other explosive articles of similar nature;

(3) Blank cartridges;

(4) Skyrockets, rockets, including all similar devices employing any combustible or explosive material and which rise in the air during discharge;

(5) Roman candles, including all devices which discharge balls of fire into the air;

(6) Chasers, including all devices which dart or travel about the surface of the ground during discharge;

(7) Snakes, boa constrictors and snake nests, containing bichloride of mercury;

(8) All articles for pyrotechnic display, which contain gunpowder;

(9) Articles commonly known as son-of-a-gun, devil-on-the-rock, crackit sticks and automatic torpedoes which contain arsenic;

(10) Explosives known as devil-on-the-walk, or any other article of similar character which explodes through means of friction, and all other similar fireworks, unless otherwise designated;

(11) Toy torpedoes of all kinds;

(12) All pyrotechnic devices having a side fuse;

(13) Fire balloons or balloons of any type which have burning material of any kind attached thereto; and

(14) Such other fireworks as may be designated as dangerous by the state fire marshal. [1961 c 228 § 3.]

70.77.135 Definitions—"Safe and sane fireworks". "Safe and sane fireworks" includes any fireworks not designated as "dangerous fireworks" except that in all cases only end fuses may be used and the total pyrotechnic content of any one piece shall not exceed one hundred grams. [1961 c 228 § 4.]

70.77.140 Definitions—**"Agricultural and wild life fireworks"**. "Agricultural and wild life fireworks" includes fireworks designed or used to prevent damages to crops or unwanted occupancy of areas by animals or birds through the employment of sound or light, or both, whenever such fireworks are so classified by the state fire marshal. [1961 c 228 § 5.]

70.77.145 Definitions—**"Class 1 flammable liquid"**. "Class 1 flammable liquid" includes any liquid whose flash point is one hundred degrees Fahrenheit, or less. [1961 c 228 § 6.]

70.77.150 Definitions—**"Side fuse"**. "Side fuse" means a fuse inserted into a pyrotechnic article or device at a point along its length. [1961 c 228 § 7.]

70.77.155 Definitions—**"End fuse"**. "End fuse" means a fuse inserted into any pyrotechnic article or device at the end as distinguished from the side of such device. [1961 c 228 § 8.]

70.77.160 Definitions—**"Public display of fireworks"**. "Public display of fireworks" means an entertainment feature where the public is admitted or permitted to view the display or discharge of dangerous fireworks. [1961 c 228 § 9.]

70.77.165 Definitions—**"Fire nuisance"**. "Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the cause of any obstruction, delay, or a hindrance to the prevention or extinguishment of fire. [1961 c 228 § 10.]

70.77.170 Definitions—**"License"**. "License" means a nontransferable formal authorization which the state fire marshal is permitted to issue under this chapter to engage in the branch of pyrotechnics specifically designated therein, whether as an importer, exporter or wholesaler, retailer, manufacturer, salesman, pyrotechnic or agricultural operator, or otherwise. [1961 c 228 § 11.]

70.77.175 Definitions—**"Licensee"**. "Licensee" means any person holding a fireworks license in conformance with this chapter. [1961 c 228 § 12.]

70.77.180 Definitions—**"Permit"**. "Permit" means the official permission granted by the local public agency to a licensee for the purposes of establishing and maintaining a place where fireworks are manufactured, constructed, produced, packaged, stored, sold, exchanged, discharged or used. [1961 c 228 § 13.]

70.77.185 Definitions—**"Package"**. "Package" includes any case, container, or receptacle, used for holding fireworks, which is closed, or sealed by tape, cordage, or by any other means. [1961 c 228 § 14.]

70.77.190 Definitions—**"Person"**. "Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit. [1961 c 228 § 15.]

70.77.195 Definitions—**"Exporter"**. "Exporter" includes any person who sells, consigns or delivers fireworks located within this state for delivery, use, or sale without this state. [1961 c 228 § 16.]

70.77.200 Definitions—**"Importer"**. "Importer" includes any person who for any purpose:

- (1) Brings fireworks into this state or causes fireworks to be brought into this state;
- (2) Procures the delivery or receives shipments of any fireworks into this state; or
- (3) Buys or contracts to buy fireworks for shipment into this state. [1961 c 228 § 17.]

70.77.205 Definitions—**"Manufacturer"**. "Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks. [1961 c 228 § 18.]

70.77.210 Definitions—**"Wholesaler"**. "Wholesaler" includes any person, other than an importer, exporter, or manufacturer selling only to wholesalers who sells fireworks to a retailer or any other person for resale and shall also include any person who sells dangerous fireworks to public display permittees. [1961 c 228 § 19.]

70.77.215 Definitions—**"Retailer"**. "Retailer" includes any person who, at a fixed location or place of business, sells, transfers, or gives fireworks to a consumer or user. [1961 c 228 § 20.]

70.77.220 Definitions—**"Salesman"**. "Salesman" includes any person who, as an employee of a manufacturer or wholesaler, solicits, accepts, or receives an order for fireworks from a licensee or permittee. [1961 c 228 § 21.]

70.77.225 Definitions—**"Sell", "transfer"**. "Sell" or "transfer" includes contracts or orders for sales or transfers. [1961 c 228 § 22.]

70.77.230 Definitions—**"Pyrotechnic operator"**. "Pyrotechnic operator" includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging public displays of dangerous fireworks. [1961 c 228 § 23.]

70.77.235 Definitions—**"Within this state"**. "Within this state" means within all territory within the boundaries of this state. [1961 c 228 § 24.]

70.77.240 Definitions—"Without this state". "Without this state" means all territory without the boundaries of this state. [1961 c 228 § 25.]

70.77.245 Definitions—"The State Fire Marshal's Seal of Registration". "The State Fire Marshal's Seal of Registration" means the seal of registration of the state fire marshal and consists of a series of concentric circles lettered as follows:

Outer circle
upper half: "REGISTERED"
lower half: "FIREWORKS"

Inner circle
upper half: "STATE OF WASHINGTON"
lower half: "STATE FIRE MARSHAL"

In the center shall appear a facsimile of the official state tree, the western hemlock.

Appended below the outer circle and in a central position shall be a box provided for displaying the registration number assigned by the state fire marshal to any registered classified fireworks manufacturer, importer, wholesaler, retailer, or other person or device governed by this chapter. [1961 c 228 § 26.]

70.77.250 State fire marshal to enforce and administer—Powers and duties. The state fire marshal shall enforce and administer this chapter and shall have the following powers and duties:

(1) He shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter;

(2) He may prescribe such rules and regulations relating to fireworks as may be necessary for the protection of life and property, and shall adopt reasonable rules and regulations not inconsistent with the provisions of this chapter, for the granting of permits for, and the presentation of, public displays of fireworks;

(3) He may adopt reasonable regulations providing for:

(a) The granting of licenses and permits for amateur research or experiments with experimental or model rockets or missiles, or for the production, transportation, or firing of experimental or model rockets or missiles.

(b) The granting of licenses and permits for the use of pyrotechnics by television, theatrical, or motion picture special effects personnel.

The provisions of this subsection do not apply to research or experiments with rockets or missiles, or the production, transportation, or firing of rockets or missiles by the department of defense of the United States, or by any agency or organization acting pursuant to a contract which it has with the department of defense for the development or production of rockets or missiles.

(4) Subject to such restrictions as are deemed necessary he may exempt from the provisions of this chapter specific pyrotechnic items for commercial, industrial, and agricultural uses. [1961 c 228 § 27.]

70.77.255 Acts prohibited without permit. No person, without securing a permit, shall do any of the following:

(1) Manufacture, import, export, possess, or sell any fireworks at wholesale or retail for any use, including agricultural purposes or wild life control;

(2) Discharge dangerous fireworks at any place;

(3) Make a public display of fireworks;

(4) Transport fireworks, except as a public carrier. [1961 c 228 § 28.]

70.77.260 Application for permit. Any adult person or other group desiring to do any act mentioned in RCW 70.77.255 shall first make written application for a permit to the chief of the fire department or the chief fire prevention officer of the city or county, or to such other person as may be designated by the governing body of the city or county, or in the event there be no such officer or person appointed within the area, to the state fire marshal or his appropriate deputy. Applications for permits for public display of fireworks shall be made in writing at least ten days in advance of the proposed display. [1961 c 228 § 29.]

70.77.265 Investigation, report on permit application. It shall be the duty of the officer to whom the application for a permit was made to make an investigation and submit a report of his findings and his recommendation for or against the issuance of the permit, together with his reasons therefor, to the governing body of the city or county. [1961 c 228 § 30.]

70.77.270 Governing body may grant or deny permit—Conditions. The governing body shall have power in its discretion to grant or deny the application, subject to such reasonable conditions, if any, as it shall prescribe. [1961 c 228 § 31.]

70.77.275 License required prior to issuance of permit. A permit shall not be issued unless the person applying for the permit has first obtained a license from the state fire marshal, as provided in this chapter, to do the particular act or acts described in the permit. [1961 c 228 § 32.]

Valid license prerequisite to grant of permit: RCW 70.77.300.

70.77.280 Public display permit—Investigation—Grant, denial—Conditions. It shall be the duty of the officer to whom the application for a permit for a public display of fireworks is made to make an investigation as to whether such a display as proposed will be of such a character and will be so located that it may be hazardous to property or dangerous to any person, and he shall in the exercise of reasonable discretion grant or deny the application, subject to such reasonable conditions, if any, as he may prescribe. [1961 c 228 § 33.]

70.77.285 Public display permit—Submission of license—Employee compensation insurance—Bond or insurance for liability. The applicant for a permit for a public display of fireworks shall at the time of application submit his license for inspection and furnish proof that he carries compensation insurance for his employees as provided by the laws of this state. He shall file with

the officer to whom the application is made, a bond issued by an authorized surety company to be approved by such officer, conditioned upon the applicant's payment of all damages to persons or property which shall or may result from or be caused by such public display of fireworks, or any negligence on the part of the applicant, or his or its agents, servants, employees, or subcontractors in the presentation thereof, or a certificate of insurance evidencing the carrying of appropriate public liability insurance for the benefit of the person named therein as assured, as evidence of ability to respond in damages in at least such amount, said policies to be similarly approved. [1961 c 228 § 34.]

Amount of bond or insurance: RCW 70.77.295.

70.77.290 Public display permit—Granted for exclusive purpose—Nontransferable. If a permit for the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. No such permit granted shall be transferable. [1961 c 228 § 35.]

70.77.295 Public display permit—Amount of bond and insurance. In the case of an application for a permit for the public display of fireworks, the amount of such a surety bond shall be not less than ten thousand dollars, and the amount of such insurance shall be not less than twenty thousand dollars. [1961 c 228 § 36.]

Bond or insurance required: RCW 70.77.285.

70.77.300 Valid license prerequisite for permit. No permit shall be granted under this chapter for any activity unless the person applying for the permit has obtained a valid license, if a license is required under this chapter for such activity. [1961 c 228 § 37.]

License required prior to issuance of permit: RCW 70.77.275.

70.77.305 Fire marshal to issue and renew licenses. The state fire marshal shall have the power to issue and renew licenses for the manufacture, importation, exportation, sale, use and transportation of all fireworks in this state. [1961 c 228 § 38.]

70.77.310 Certain sales and uses exempt from licensing. No license shall be required for the sale at retail or for the use and discharge of agricultural and wild life fireworks. [1961 c 228 § 39.]

70.77.315 Application for license. Any person who desires to engage in the manufacture, importation, sale, or use of fireworks shall first make a written verified application to the state fire marshal on forms provided by him. Such application shall be accompanied by the annual license fee as prescribed in this chapter. [1961 c 228 § 40.]

70.77.320 Application for license to be signed. The application for a license shall be signed by the applicant. If application is made by a partnership, it shall be signed by each partner of the partnership, and if application is made by a corporation, it shall be signed by an officer of

the corporation and bear the seal of the corporation. [1961 c 228 § 41.]

70.77.325 Annual application for renewal of license. Application for renewal of a license shall be made annually by every person holding an existing license and accompanied by the annual license fee as prescribed in this chapter. [1961 c 228 § 42.]

70.77.330 License to engage in particular act to be issued if not contrary to public safety or welfare—Transportation of fireworks authorized. If the state fire marshal finds that the granting or renewing of such license would not be contrary to public safety or welfare, he shall issue or renew a license authorizing the applicant to engage in the particular act or acts upon the payment of the license fee specified in this chapter. Licensees may transport the class of fireworks for which they hold a valid license. [1961 c 228 § 43.]

70.77.335 License authorizes activities of registered salesmen, employees. The authorization to engage in the particular act or acts conferred by a license to a person shall extend to salesmen and other employees of such person who are registered with the state fire marshal. [1961 c 228 § 44.]

70.77.340 Annual license fees. The original and annual renewal license fee shall be as follows:

Manufacturer	\$ 500.00
Importer and/or exporter.....	100.00
Wholesaler	1,000.00
Retailer (for each separate retail outlet)	10.00
Public display for dangerous fireworks	10.00
Pyrotechnic operator for dangerous fireworks	5.00

[1961 c 228 § 45.]

70.77.345 Duration of licenses. Beginning January 1, 1962, the original and annual renewal license fee shall be for the calendar year from January 1st to December 31st or for the remaining portion thereof. [1961 c 228 § 46.]

70.77.350 Delinquent license fee. A penalty fee equal to fifty percent of the required original and annual renewal license fee shall be added to such fee in all cases where the fee for a renewal of a license is not paid on or before April 1st. [1961 c 228 § 47.]

70.77.355 General license for public display—Surety bond—Filing with legislative body. Notwithstanding any of the other provisions of this chapter relating to public liability insurance and bonds, any adult individual, concern, firm, corporation, or copartnership may secure a general license for the public display of fireworks within the state of Washington subject to the provisions of this chapter relative to the securing of local permits for the public display of fireworks in any city or

county, except that in lieu of filing the bonds or certificate of public liability insurance as required in RCW 70.77.285, a surety bond similarly conditioned in the amount of twenty-five thousand dollars or a certificate evidencing public liability insurance in a like amount shall be filed with the state fire marshal. The state fire marshal shall have the authority to issue such licenses, subject to such reasonable rules and regulations which he may adopt, not inconsistent with the provisions of this chapter. A certificate evidencing such general license, when so obtained, shall be filed with the legislative body or officer granting a permit for the public display of fireworks prior to the issuance thereof. [1961 c 228 § 48.]

70.77.360 Denial of license if contrary to public safety or welfare. If the state fire marshal finds that the granting or renewing of a license would be contrary to the public safety or welfare, he may deny the application for a license or a renewal of a license. [1961 c 228 § 49.]

70.77.365 Denial of license for failure to meet qualifications or conditions. A written report of the state fire marshal, any of his deputies or salaried assistants, or the chief of any city or county fire department or fire protection district or their authorized representatives, disclosing that the applicant for a license or for a renewal of a license, or the premises for which a license is to apply, do not meet the qualifications or conditions for a license shall constitute grounds for the denial of any application for a license or the renewal of a license. [1961 c 228 § 50.]

70.77.370 Hearing on denial of license. Any applicant who has been denied a license or a renewal of a license shall be entitled to a hearing in accordance with the provisions of chapter 48.04 RCW. [1961 c 228 § 51.]

70.77.375 Mandatory revocation of license. The state fire marshal, upon reasonable opportunity to be heard, shall revoke any license issued pursuant to this chapter, if he finds that:

- (1) A licensee has failed to pay the original and annual renewal license fee provided in this chapter;
- (2) The licensee has violated any provisions of this chapter or any rule or regulations made by the state fire marshal under and with the authority of this chapter;
- (3) The licensee has created or caused a fire nuisance;
- (4) Any licensee has failed or refused to file any required reports; or
- (5) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the state fire marshal in refusing originally to issue such license. [1961 c 228 § 52.]

70.77.380 Classification of fireworks. All fireworks, before being imported, exported, sold or offered for sale, shall be classified by the state fire marshal, in accordance with the provisions of this chapter, as being either

dangerous fireworks, safe and sane fireworks, or agriculture and wild life fireworks. [1961 c 228 § 53.]

70.77.385 Classification, registration prior to sale, etc.—Labels—Shipments to be prepaid. No fireworks items shall be sold, offered for sale, discharged, or transported within the state without first having been classified and registered by the state fire marshal. Any licensee desiring to have safe and sane fireworks articles classified and registered by the state fire marshal shall submit to his office not less than three live samples of each item for which classification is desired together with a notarized chemical analysis of the materials of such samples. Each item must be labeled as for sale and distribution together with firing instructions. Every fireworks article which has not been submitted for classification or which does not bear the classification label of the state fire marshal shall be considered to be dangerous fireworks. All shipments shall be prepaid. Classification shall be limited to the products of licensed manufacturers excepting only fireworks articles classified by this chapter as dangerous fireworks intended and used for public fireworks displays which may be classified for licensed manufacturers, importers and/or wholesalers. [1961 c 228 § 54.]

70.77.390 Labeling, stamping dangerous fireworks—Marking safe and sane fireworks. The manufacturer, importer or wholesaler shall stamp or label each case or carton of dangerous fireworks offered for sale, sold, consigned or delivered within this state for sale or use within this state as "dangerous fireworks". Each package of safe and sane fireworks shall be marked as "safe and sane fireworks" and shall bear the state fire marshal's classification label and license number. [1961 c 228 § 55.]

70.77.395 Dates safe and sane fireworks may be sold. No safe and sane fireworks shall be sold or offered for sale at retail within this state except from twelve o'clock noon on the twenty-eighth of June to twelve o'clock noon on the sixth of July of each year. [1961 c 228 § 56.]

70.77.400 Protective caps or enclosed packages required for safe and sane fireworks. No safe and sane fireworks shall be sold or offered for sale at retail unless the fuses or other igniting devices are protected by approved protective caps or each item or group of items is enclosed or sealed in a package bearing the state fire marshal's seal of registration upon which the wholesaler's license number appears. [1961 c 228 § 57.]

70.77.405 Authorized sales of toy pistols, canes, guns, etc. Toy pistols, toy canes, toy guns, or other similar devices in which paper caps containing not more than twenty-five hundredths grain of explosive compound for each cap is used may be sold at all times unless prohibited by local ordinance. [1961 c 228 § 58.]

70.77.410 Public displays not to be hazardous. All public displays of fireworks shall be of such a character

and so located, discharged, or fired as not to be hazardous or dangerous to persons or property. [1961 c 228 § 59.]

70.77.415 Supervision of public displays. Every public display of fireworks shall be handled or supervised by a competent and experienced pyrotechnic operator approved by the chief of the fire department or the chief fire prevention officer of the city or county in which the display is to be held, or by the state fire marshal or his authorized deputy therefor, if there be no chief of the fire department or chief fire prevention officer in the area. [1961 c 228 § 60.]

70.77.420 Storage permit required. It shall be unlawful for any person to store fireworks of any class without first having made a written application for and received a permit for such storage to the chief of the fire department or to the chief fire prevention officer of the city or county in which the storage is to be made, or to the state fire marshal, or to such authorized deputy as may be designated for such purpose at least ten days prior to the date of the proposed storage. If there is no chief of the fire department or chief fire prevention officer in the area, it shall be the duty of the officer to whom the application for a storage permit is made to make an investigation as to whether such storage as proposed will be of such a nature and character and will be so located as to constitute a hazard to property or be dangerous to any person, and he shall in the exercise of reasonable discretion grant or deny the application, subject to such reasonable conditions, if any, as he may prescribe. [1961 c 228 § 61.]

70.77.425 Approved storage facilities required. It shall be unlawful for any person to store unsold stocks of safe and sane fireworks remaining unsold after the lawful period of sale as provided in his permit except in such places of storage as the local officer issuing the permit shall approve. Unsold stocks of safe and sane fireworks remaining after the authorized retail sales period from twelve o'clock noon on June 28th to twelve o'clock noon on July 6th shall be returned on or before July 31st of the same year to the approved storage facilities of a licensed fireworks wholesaler, to a magazine or storage place approved by the chief of any city or county fire department or fire protection district, or to a place approved by the state fire marshal. [1961 c 228 § 62.]

70.77.430 Sale of stock after revocation, surrender, failure to renew license. Following the revocation or voluntary surrender of, or failure to renew his license, any person in lawful possession of a lawfully acquired stock of fireworks may sell such fireworks only under supervision of the state fire marshal and in such a manner as he shall by rule provide and solely to persons who are authorized to buy, possess, sell, or use such fireworks. [1961 c 228 § 63.]

70.77.435 Seizure of fireworks. Any fireworks not bearing the seal of approval of the state fire marshal

which are illegally sold, offered for sale, used, discharged, possessed or transported in violation of the provisions of this chapter or the rules or regulations of the state fire marshal shall be subject to seizure by the state fire marshal or any deputy state fire marshal. Any fireworks seized under this section may be disposed of by the state fire marshal by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under the provisions of RCW 70.77.440, whichever is later. [1961 c 228 § 64.]

70.77.440 Seizure of fireworks—Petition for return—Hearing—Decision—Judicial action for recovery. Any person whose fireworks are seized under the provisions of RCW 70.77.435 may within ten days after such seizure petition the state fire marshal to return the fireworks seized upon the ground that such fireworks were illegally or erroneously seized. Any petition filed hereunder shall be considered by the state fire marshal within fifteen days after filing and an oral hearing granted the petitioner, if requested. Notice of the decision of the state fire marshal shall be served upon the petitioner. The state fire marshal may order the fireworks seized under this chapter disposed of or returned to the petitioner if illegally or erroneously seized. The determination of the state fire marshal is final unless within sixty days an action is commenced in a court of competent jurisdiction in the state of Washington for the recovery of the fireworks seized by the state fire marshal. [1961 c 228 § 65.]

70.77.445 Removal of vehicle unlawfully used—Notice—Garageman's lien—Sale when unclaimed. The state fire marshal, and his deputies or salaried assistants, the chief of any city or county fire department or fire protection district, or any of their authorized representatives may remove any vehicle which is used unlawfully to transport fireworks or in which any fireworks are unlawfully kept, deposited or concealed, to the nearest garage or other place of safety or to a garage designated or maintained by the state fire marshal.

In the event that the state fire marshal, or any of his deputies or salaried assistants, the chief of any city or county fire department or fire protection district, or any of their authorized representatives, removes any such vehicle, he shall give the notices required of officers under RCW 46.52.110, and the keeper of any garage in which any such vehicle is stored may have a lien thereon for his compensation for towage and for caring for and keeping safe such vehicle.

On the expiration of notice given, unclaimed vehicles shall be sold pursuant to RCW 46.52.110 and the proceeds disposed of as provided therein. [1961 c 228 § 66.]

70.77.450 Examination, inspection of books and premises. The state fire marshal may make an examination of the books and records of any licensee, or other person relative to fireworks, and may visit and inspect the premises of any licensee he may deem at any time necessary for the purpose of enforcing the provisions of this chapter. The licensee, owner, lessee, manager, or

operator of any such building or premises shall permit the state fire marshal, his deputies, his salaried assistants and the chief of any city or county fire department or fire protection district and their authorized representatives to enter and inspect the premises at the time and for the purpose stated in this section. [1961 c 228 § 67.]

70.77.455 Licensees to maintain and make available to state fire marshal complete records. All licensees shall maintain and make available to the state fire marshal full and complete records showing all production, imports, exports, purchases, sales and consumption of fireworks items by kind and class whether dangerous fireworks, safe and sane fireworks, or agricultural and wild life fireworks. [1961 c 228 § 68.]

70.77.460 Reports, payments deemed made when filed or paid or date mailed. When reports on fireworks transactions or the payments of license fees or penalties are required to be made on or by specified dates, they shall be deemed to have been made at the time they are filed with or paid to the state fire marshal or, if sent by mail, on the date shown by the United States postmark on the envelope containing the report or payment. [1961 c 228 § 69.]

70.77.465 Additional and supplemental reports. In addition to any other reports required under this chapter, the state fire marshal may, by rule or otherwise, require additional, other, or supplemental reports from licensees and other persons and prescribe the form, including verification, of the information to be given when filing such additional, other or supplemental reports. [1961 c 228 § 70.]

70.77.470 Bills of lading, invoices to bear license numbers. Each bill of lading, manifest, and invoice issued to cover sales or shipments of fireworks shall bear the license number of both the seller or shipper and buyer or receiver. [1961 c 228 § 71.]

70.77.475 Unclassified fireworks—Sale, possession, etc., prohibited. The sale, transportation, possession, or discharge of unclassified fireworks is prohibited. [1961 c 228 § 72.]

70.77.480 Prohibited transfers of dangerous fireworks. The transfer of dangerous fireworks ownership whether by sale at wholesale or retail, by gift or other means of conveyance of title or the delivery of any dangerous fireworks to any person in the state who does not possess and present to the seller for inspection at the time of transfer a valid license and permit, where such permit is required to purchase, possess, transport, or use dangerous fireworks, is prohibited. [1961 c 228 § 73.]

70.77.485 Unlawful possession—Penalty. The unlawful possession of any class or kind of fireworks in violation of the provisions of this chapter shall be a misdemeanor. [1961 c 228 § 74.]

70.77.490 Possession of unmarked fireworks evidence of violation. Possession of fireworks unmarked with the

manufacturer's license number and the state fire marshal's classification as required by this chapter shall be prima facie evidence of a violation of this chapter. [1961 c 228 § 75.]

70.77.495 Forestry permit to set off fireworks in forest, brush, fallow, etc. Nothing in this chapter shall be construed as permitting any person to set off fireworks of any kind in forest, fallows, grass or brush covered land, either on his own land or the property of another, between April 15th and December 1st of any year, unless it is done under a written permit from the supervisor of forestry or his duly authorized agent, and in strict accordance with the terms of the permit and any other applicable law. [1961 c 228 § 76.]

70.77.500 Authorized delivery, transportation of dangerous or agricultural and wild life fireworks. No person shall transport, convey, or deliver any dangerous fireworks or agricultural and wild life fireworks except for licensed permittees making delivery to:

- (1) Other licensed permittees;
- (2) Locations of public displays of fireworks authorized under this part;
- (3) Distributors outside this state; or
- (4) Agricultural or wild life permittees. [1961 c 228 § 77.]

70.77.505 Sale, discharge where flammables or motor vehicles stored. No person shall sell or discharge any fireworks in any public garage or public oil station or on any premises where gasoline or other class 1 flammable liquids are stored or dispensed or where more than four motor vehicles are stored. [1961 c 228 § 78.]

70.77.510 Sales or transfers of dangerous fireworks only to permittee. No person shall sell or transfer any dangerous fireworks to any person who is not a fireworks permittee as provided for by this chapter. [1961 c 228 § 79.]

70.77.515 Sale, transfer of safe and sane fireworks only at licensed place of business. No person shall sell or transfer any safe and sane fireworks to a consumer or user thereof other than at a fixed place of business of a retailer for which a license and permit have been issued. [1961 c 228 § 80.]

70.77.520 Fire nuisance where fireworks kept prohibited. No person shall allow any rubbish to accumulate in any premises when any fireworks are stored or sold or permit a fire nuisance to exist. [1961 c 228 § 81.]

70.77.525 Nonprohibited acts—Out-of-state shipments, wholesale sales, demonstrations, athletic events, public displays, etc. This chapter does not prohibit any manufacturer, wholesaler, dealer or jobber, having a license and a permit secured under the provisions of this chapter, from:

- (1) Manufacturing or selling any kind of fireworks for direct shipment out of this state;
- (2) Manufacturing or selling at wholesale any dangerous fireworks to persons holding permits hereunder;

(3) Selling blank cartridges for use by persons for bona fide ceremonial purposes, athletic, sports events, or military ceremonials or demonstrations; or

(4) Selling dangerous fireworks to persons having a license and a permit for public displays of fireworks. [1961 c 228 § 82.]

70.77.530 Nonprohibited acts—Signal purposes, forest protection. This chapter does not prohibit the use of torpedoes, flares, or fuses by motor vehicles, railroads, or other transportation agencies for signal purposes or illumination or for use in forest protection activities. [1961 c 228 § 83.]

70.77.535 Nonprohibited acts—Movies, productions, shows. This chapter does not prohibit the assembling, compounding, use and display of fireworks of whatever nature by any person engaged in the production of motion pictures, theatricals, or operas when such use and display is a necessary part of the production and such person possesses a valid permit to purchase, possess, transport or use dangerous fireworks. [1961 c 228 § 84.]

70.77.540 Penalty. Any person violating any of the provisions of this chapter or any rules or regulations issued thereunder is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not exceeding one year, or by both such fine and imprisonment. [1961 c 228 § 85.]

70.77.545 Violation a separate, continuing offense. A person is guilty of a separate offense for each day during which he commits, continues, or permits a violation of any provision of, or any order, rule, or regulation made pursuant to this chapter. [1961 c 228 § 86.]

70.77.550 Short title. This chapter shall be known and may be cited as the state fireworks law. [1961 c 228 § 87.]

70.77.555 Limitation on local permit fee. A local public agency shall not charge more than ten dollars as a permit fee for any one year. [1961 c 228 § 88.]

70.77.560 Prior rules continued until modified. The rules and regulations adopted by the state fire marshal relating to fireworks and in existence on January 1, 1962 shall continue thereafter to be in effect as rules and regulations of the state fire marshal until amended or repealed pursuant to the provisions of this chapter. [1961 c 228 § 89.]

70.77.900 Effective date—1961 c 228. This act shall take effect on January 1, 1962. [1961 c 228 § 90.]

70.77.910 Severability—1961 c 228. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 228 § 91.]

Chapter 70.79

BOILERS AND UNFIRED PRESSURE VESSELS

Sections	
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State building code: Chapter 19.27 RCW.

70.79.010 Board of boiler rules—Members—Terms—Meetings. There is hereby created within this state a board of boiler rules, which shall hereafter be referred to as the board, consisting of five members who shall be appointed to the board by the governor, one for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. At the expiration of their respective terms of office, they, or their successors identifiable with the same interests respectively as hereinafter provided, shall be appointed for terms of four years each. The governor may at any time remove any member of the board for inefficiency or neglect of duty in office. Upon the death or incapacity of any member the governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his

predecessor was identified. Of these five appointed members, one shall be representative of owners and users of boilers and unfired pressure vessels within the state, one shall be representative of the boiler or unfired pressure vessel manufacturers within the state, one shall be a representative of a boiler insurance company licensed to do business within the state, one shall be a mechanical engineer on the faculty of a recognized engineering college or a graduate mechanical engineer having equivalent experience, and one shall be representative of the boilermakers or practical steam operating engineers. The board shall elect one of its members to serve as chairman and, at the call of the chairman, the board shall meet at least four times each year at the state capitol or other place designated by the board. [1951 c 32 § 1.]

70.79.020 Travel expense allowance. The members of the board shall serve without salary and shall receive travel expenses incurred while in the performance of their duties as members of the board, in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 159; 1951 c 32 § 2.]

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

70.79.030 Duties of board—Make definitions, rules and regulations—Boiler construction code. The board shall formulate definitions, rules, and regulations for the safe and proper construction, installation, repair, use, and operation of boilers and for the safe and proper construction, installation, and repair of unfired pressure vessels in this state. The definitions, rules, and regulations so formulated shall be based upon, and, at all times, follow the generally accepted nationwide engineering standards, formulae, and practices established and pertaining to boiler and unfired pressure vessel construction and safety, and the board may by resolution adopt an existing published codification thereof, known as "The Boiler Construction Code of the American Society of Mechanical Engineers", with the amendments and interpretations thereto made and approved by the council of the society, and may likewise adopt the amendments and interpretations subsequently made and published by the same authority; and when so adopted the same shall be deemed incorporated into, and to constitute a part or the whole of the definitions, rules, and regulations of the board. Amendments and interpretations to the code so adopted shall be adopted immediately upon being promulgated, to the end that the definitions, rules, and regulations shall at all times follow the generally accepted nationwide engineering standards: *Provided, however,* That all rules and regulations promulgated by the board, including any or all of the boiler construction code of the American society of mechanical engineers with amendments and interpretations thereof, shall be adopted in compliance with the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended. All boilers and unfired pressure vessels subject to the jurisdiction of the board, which have been constructed or installed in accordance

with the code of the American society of mechanical engineers shall be prima facie evidence of compliance with those provisions of this chapter and the rules of the board. [1972 ex.s. c 86 § 1; 1951 c 32 § 3.]

70.79.040 Rules and regulations—Scope. The board shall promulgate rules and regulations for the safe and proper installation, repair, use and operation of boilers, and for the safe and proper installation and repair of unfired pressure vessels which were in use or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter. [1951 c 32 § 4.]

70.79.050 Rules and regulations—Effect. (1) The rules and regulations formulated by the board shall have the force and effect of law, except that the rules applying to the construction of new boilers and unfired pressure vessels shall not be construed to prevent the installation thereof until twelve months after their approval by the director of the department of labor and industries.

(2) Subsequent amendments to the rules and regulations adopted by the board shall be permissive immediately and shall become mandatory twelve months after such approval. [1951 c 32 § 5.]

70.79.060 Construction, installation must conform to rules. No power boiler, low pressure boiler, or unfired pressure vessel which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after twelve months from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective, unless the boiler or unfired pressure vessel is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case a special installation and operating permit may at its discretion be granted by the board. [1951 c 32 § 6.]

70.79.070 Existing installations—Conformance required. (1) All boilers and unfired pressure vessels which were in use, or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition. [1951 c 32 § 7.]

70.79.080 Exemptions from chapter. This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

(1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;

(2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;

(3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;

(4) Air tanks installed on the right of way of railroads and used directly in the operation of trains;

(5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;

(6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge when not located in place of public assembly;

(7) Tanks used in connection with heating water for domestic and/or residential purposes;

(8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels. [1951 c 32 § 8.]

70.79.090 Exemptions from certain provisions. The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220, and 70.79.240 through *70.79.340:

(1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;

(2) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;

(3) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;

(4) Approved pressure vessels (hot water heaters listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, used for hot water supply at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred degrees Fahrenheit or less: *Provided, however,* That such pressure vessels are not installed in schools, child care centers, public and private hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(5) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves

only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families;

(6) Unfired pressure vessels containing liquified petroleum gases. [1972 ex.s. c 86 § 2; 1951 c 32 § 9.]

*Reviser's note: RCW "70.79.340" was repealed by 1970 ex.s. c 21 § 3.

70.79.100 Chief inspector—Qualifications—Appointment, removal. (1) Within sixty days after the effective date of this chapter, and at any time thereafter that the office of the chief inspector may become vacant, the director of the department of labor and industries shall appoint a chief inspector who shall have had at the time of such appointment not less than ten years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels, as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the same kind of examination as that prescribed for deputy or special inspectors in RCW 70.79.170 to be chief inspector until his successor shall have been appointed and qualified. Such chief inspector may be removed for cause after due investigation by the board and its recommendation to the director of the department of labor and industries. [1951 c 32 § 10.]

70.79.110 Chief inspector—Duties in general. The chief inspector, if authorized by the director of the department of labor and industries is hereby charged, directed and empowered:

(1) To cause the prosecution of all violators of the provisions of this chapter;

(2) To issue, or to suspend, or revoke for cause, inspection certificates as provided for in RCW 70.79.290;

(3) To take action necessary for the enforcement of the laws of the state governing the use of boilers and unfired pressure vessels and of the rules and regulations of the board;

(4) To keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last recorded internal inspection of all boilers and unfired pressure vessels to which this chapter applies;

(5) To publish and distribute, among manufacturers and others requesting them, copies of the rules and regulations adopted by the board. [1951 c 32 § 11.]

70.79.120 Deputy inspectors—Qualifications—Employment. The chief inspector shall employ deputy inspectors who shall be responsible to the chief inspector and who shall have had at time of appointment not less than five years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the examination provided for in RCW 70.79.170. [1951 c 32 § 12.]

70.79.130 Special inspectors—Qualifications—Commission. In addition to the deputy boiler inspectors authorized by RCW 70.79.120, the chief inspector shall,

upon the request of any company authorized to insure against loss from explosion of boilers and unfired pressure vessels in this state, or upon the request of any company operating unfired pressure vessels in this state, issue to any inspectors of said company commissions as special inspectors, provided that each such inspector before receiving his commission shall satisfactorily pass the examination provided for in RCW 70.79.170, or, in lieu of such examination, shall hold a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state or a certificate as an inspector of boilers from the national board of boiler and pressure vessel inspectors. A commission as a special inspector for a company operating unfired pressure vessels in this state shall be issued only if, in addition to meeting the requirements stated herein, the inspector is continuously employed by the company for the purpose of making inspections of unfired pressure vessels used, or to be used, by such company. [1951 c 32 § 13.]

70.79.140 Special inspectors—Compensation—Continuance of commission. Special inspectors shall receive no salary from, nor shall any of their expenses be paid by the state, and the continuance of a special inspector's commission shall be conditioned upon his continuing in the employ of a boiler insurance company duly authorized as aforesaid or upon continuing in the employ of a company operating unfired pressure vessels in this state and upon his maintenance of the standards imposed by this chapter. [1951 c 32 § 14.]

70.79.150 Special inspectors—Inspections—Exempts from inspection fees. Special inspectors shall inspect all boilers and unfired pressure vessels insured or all unfired pressure vessels operated by their respective companies and, when so inspected, the owners and users of such insured boilers and unfired pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in RCW 70.79.330. [1951 c 32 § 15.]

70.79.160 Report of inspection by special inspector—Filing. Each company employing special inspectors shall within thirty days following each internal boiler or unfired pressure vessel inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms as promulgated by the American society of mechanical engineers. Reports of external inspections shall not be required except when such inspections disclose that the boiler or unfired pressure vessel is in dangerous condition. [1951 c 32 § 16.]

70.79.170 Examinations for inspector's appointment or commission—Reexamination. Examinations for chief, deputy, or special inspectors shall be in writing and shall be held by the board, or by at least two members of the board. Such examinations shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service. In case an applicant for an inspector's

appointment or commission fails to pass the examination, he may appeal to the board for another examination which shall be given by the board within ninety days. The record of an applicant's examination shall be accessible to said applicant and his employer. [1951 c 32 § 18.]

70.79.180 Suspension, revocation of inspector's commission—Grounds—Reinstatement. A commission may be suspended or revoked after due investigation and recommendation by the board to the director of the department of labor and industries for the incompetence or untrustworthiness of the holder thereof, or for wilful falsification of any matter or statement contained in his application or in a report of any inspection. A person whose commission has been suspended or revoked, except for untrustworthiness, shall be entitled to apply to the board for reinstatement or, in the case of a revocation, for a new examination and commission after ninety days from such revocation. [1951 c 32 § 19.]

70.79.190 Suspension, revocation of commission—Appeal. A person whose commission has been suspended or revoked shall be entitled to an appeal as provided in RCW 70.79.360 and to be present in person and/or represented by counsel on the hearing of the appeal. [1951 c 32 § 20.]

70.79.200 Lost or destroyed certificate or commission. If a certificate or commission is lost or destroyed, a new certificate or commission shall be issued in its place without another examination. [1951 c 32 § 21.]

70.79.210 Inspectors—Performance bond required. The chief inspector shall furnish a bond in the sum of five thousand dollars and each of the deputy inspectors, employed and paid by the state, shall furnish a bond in the sum of two thousand dollars conditioned upon the faithful performance of their duties and upon a true account of moneys handled by them respectively and the payment thereof to the proper recipient. The cost of said bonds shall be paid by the state. [1951 c 32 § 35.]

70.79.220 Inspections—Who shall make. The inspections herein required shall be made by the chief inspector, by a deputy inspector, or by a special inspector provided for in this chapter. [1951 c 32 § 25.]

70.79.230 Access to premises by inspectors. The chief inspector, or any deputy or special inspector, shall have free access, during reasonable hours, to any premises in the state where a boiler or unfired pressure vessel is being constructed, or is being installed or operated, for the purpose of ascertaining whether such boiler or unfired pressure vessel is constructed, installed and operated in accordance with the provisions of this chapter. [1951 c 32 § 17.]

70.79.240 Inspection of boilers, etc.—Scope—Frequency. Each boiler and unfired pressure vessel used or proposed to be used within this state, except boilers or unfired pressure vessels exempt in RCW 70.79.080 and

70.79.090, shall be thoroughly inspected as to their construction, installation, condition and operation, as follows:

(1) Power boilers shall be inspected annually both internally and externally while not under pressure and shall also be inspected annually externally while under pressure if possible;

(2) Low pressure heating boilers shall be inspected both internally and externally biennially where construction will permit;

(3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between inspections;

(4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board, but internal inspections shall not be required of unfired pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, head, or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the board or in accordance with standards substantially equivalent to the rules and regulations of the board, in effect at the time of manufacture. [1951 c 32 § 22.]

70.79.250 Inspection—Frequency—Grace period. In the case of power boilers a grace period of two months longer than the twelve months period may elapse between internal inspections of a boiler while not under pressure or between external inspections of a boiler while under pressure; in the case of low pressure heating boilers not more than twenty-six months shall elapse between inspections, and in the case of unfired pressure vessels not more than two months longer than the period between inspections prescribed by the board shall elapse between internal inspections. [1951 c 32 § 23.]

70.79.260 Inspection—Frequency—Modification by rules. The rules and regulations formulated by the board applying to the inspection of unfired pressure vessels may be modified by the board to reduce or extend the interval between required inspections where the contents of the vessel or the material of which it is constructed warrant special consideration. [1951 c 32 § 24.]

70.79.270 Hydrostatic test. If at any time a hydrostatic test shall be deemed necessary to determine the safety of a boiler or unfired pressure vessel, [the] same shall be made, at the discretion of the inspector, by the owner or user thereof. [1951 c 32 § 26.]

70.79.280 Inspection during construction. All boilers and all unfired pressure vessels to be installed in this state after the twelve months period from the date upon which the rules and regulations of the board shall become effective shall be inspected during construction as required by the applicable rules and regulations of the

board by an inspector authorized to inspect boilers in this state, or, if constructed outside of the state, by an inspector holding a certificate from the national board of boiler and pressure vessel inspectors, or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to that of this state as provided in RCW 70.79.170. [1951 c 32 § 27.]

70.79.290 Inspection certificate—Contents—Posting—Fee. If, upon inspection, a boiler or pressure vessel is found to comply with the rules and regulations of the board, and upon the appropriate fee payment made directly to the chief inspector, as required by RCW 70.79.160 or 70.79.330, the chief inspector shall issue to the owner or user of such a boiler or pressure vessel an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be operated. Such inspection certificate shall be valid for not more than fourteen months from its date in the case of power boilers and twenty-six months in the case of low pressure heating boilers, and for not more than two months longer than the authorized inspection period in the case of pressure vessels. Certificates shall be posted under glass in the room containing the boiler or pressure vessel inspected. If the boiler or pressure vessel is not located within a building, the certificate shall be posted in a location convenient to the boiler or pressure vessel inspected or, in the case of a portable boiler or pressure vessel, the certificate shall be kept in a protective container to be fastened to the boiler or pressure vessel or in a tool box accompanying the boiler or pressure vessel. [1977 ex.s. c 175 § 1; 1970 ex.s. c 21 § 1; 1951 c 32 § 28.]

70.79.300 Inspection certificate invalid on termination of insurance. No inspection certificate issued for an insured boiler or unfired pressure vessel inspected by a special inspector shall be valid after the boiler or unfired pressure vessel, for which it was issued, shall cease to be insured by a company duly authorized by this state to carry such insurance. [1951 c 32 § 29.]

70.79.310 Inspection certificate—Suspension—Reinstatement. The chief inspector, or his authorized representative, may at any time suspend an inspection certificate when, in his opinion, the boiler or unfired pressure vessel for which it was issued, cannot be operated without menace to the public safety, or when the boiler or unfired pressure vessel is found not to comply with the rules and regulations herein provided. A special inspector shall have corresponding powers with respect to inspection certificates for boilers or unfired pressure vessels insured or unfired pressure vessels operated by the company employing him. Such suspension of an inspection certificate shall continue in effect until such boiler or unfired pressure vessel shall have been made to conform to the rules and regulations of the board, and until said inspection certificate shall have been reinstated. [1951 c 32 § 30.]

70.79.320 Operating without or exceeding inspection certificate prohibited—Penalty. After twelve months following the date on which this chapter becomes effective, it shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter. The operation of a boiler or unfired pressure vessel without such inspection certificate, or at a pressure exceeding that specified in such inspection certificate, shall constitute a misdemeanor on the part of the owner, user, or operator thereof. Each day of such unlawful operation shall be deemed a separate offense. [1951 c 32 § 31.]

70.79.330 Inspection fees—Expenses—Schedules. The owner or user of a boiler or pressure vessel required by this chapter to be inspected by the chief inspector, or his deputy inspector, shall pay directly to the chief inspector, upon completion of inspection, fees and expenses in accordance with a schedule adopted by the board and approved by the director of the department of labor and industries in accordance with the requirements of the Administrative Procedure Act, chapter 34.04 RCW. [1977 ex.s. c 175 § 2; 1970 ex.s. c 21 § 2; 1963 c 217 § 1; 1951 c 32 § 32.]

70.79.350 Inspection fees—Receipts for—Pressure systems safety fund. The chief inspector shall give an official receipt for all fees required by chapter 70.79 RCW and shall transfer all sums so received to the treasurer of the state of Washington as ex officio custodian thereof and by him, as such custodian, shall place said sums in a special fund hereby created and designated as the "pressure systems safety fund". Said funds by him shall be paid out upon vouchers duly and regularly issued therefor and approved by the director of the department of labor and industries. The treasurer, as ex officio custodian of said fund, shall keep an accurate record of any payments into said fund, and of all disbursements therefrom. Said fund shall be used exclusively to defray only the expenses of administering chapter 70.79 RCW by the chief inspector as authorized by law and the expenses incident to the maintenance of his office. The fund shall be charged with its pro rata share of the cost of administering said fund which is to be determined by the director of financial management and by the director of the department of labor and industries. [1979 c 151 § 171; 1977 ex.s. c 175 § 3; 1951 c 32 § 34.]

70.79.360 Appeal from orders or acts. Any person aggrieved by an order or act of the director of the department of labor and industries, the chief inspector, under this chapter, may, within fifteen days after notice thereof, appeal from such order or act to the board which shall, within thirty days thereafter, hold a hearing after having given at least ten days written notice to all interested parties. The board shall, within thirty days after such hearing, issue an appropriate order either approving or disapproving said order or act. A copy of such

order by the board shall be given to all interested parties. Within thirty days after any order or act of the board, any person aggrieved thereby may file a petition in the superior court of the county of Thurston for a review thereof. The court shall summarily hear the petition and may make any appropriate order or decree. [1951 c 32 § 36.]

70.79.900 Severability—1951 c 32. The fact that any section, subsection, sentence, clause, or phrase of this chapter is declared unconstitutional or invalid for any reason shall not affect the remaining portions of this chapter. [1951 c 32 § 37.]

Chapter 70.82

CEREBRAL PALSY PROGRAM

Sections	
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70.82.030	Eligibility.
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70.82.050	Powers, duties, functions, unallocated funds, transferred.

70.82.010 Purpose and aim of program. It is hereby declared to be of vital concern to the state of Washington that all persons who are bona fide residents of the state of Washington and who are afflicted with cerebral palsy in any degree be provided with facilities and a program of service for medical care, education, treatment and training to enable them to become normal individuals. In order to effectively accomplish such purpose the department of social and health services, hereinafter called the department, is authorized and instructed and it shall be its duty to establish and administer facilities and a program of service for the discovery, care, education, hospitalization, treatment and training of educable persons afflicted with cerebral palsy, and to provide in connection therewith nursing, medical, surgical and corrective care, together with academic, occupational and related training. Such program shall extend to developing, extending and improving service for the discovery of such persons and for diagnosis and hospitalization and shall include cooperation with other agencies of the state charged with the administration of laws providing for any type of service or aid to handicapped persons, and with the United States government through any appropriate agency or instrumentality in developing, extending and improving such service, program and facilities. Such facilities shall include field clinics, diagnosis and observation centers, boarding schools, special classes in day schools, research facilities and such other facilities as shall be required to render appropriate aid to such persons. Existing facilities, buildings, hospitals and equipment belonging to or operated by the state of Washington shall be made available for these purposes when use therefor does not

conflict with the primary use of such existing facilities. Existing buildings, facilities and equipment belonging to private persons, firms or corporations or to the United States government may be acquired or leased. [1974 ex.s. c 91 § 2; 1947 c 240 § 1; Rem. Supp. 1947 § 5547-1.]

Severability—1974 ex.s. c 91: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 91 § 8.]

Emergency—Effective date—1974 ex.s. c 91: "This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: *Provided*, That sections 2 through 5 of this 1974 amendatory act shall not take effect until July 1, 1974." [1974 ex.s. c 91 § 7.]

Severability—1947 c 240: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application." [1947 c 240 § 5.] This applies to RCW 70.82.010, 70.82.030 and 70.82.040.

70.82.021 Cerebral palsy fund—Moneys transferred to general fund. All moneys in the state treasury to the credit of the state cerebral palsy fund on the first day of May, 1955, and all moneys thereafter paid into the state treasury for or to the credit of the state cerebral palsy fund, shall be and are hereby transferred to and placed in the general fund. [1955 c 326 § 1.]

70.82.022 Cerebral palsy fund—Appropriations to be paid from general fund. From and after the first day of April, 1955, all appropriations made by the thirty-fourth legislature from the state cerebral palsy fund shall be paid out of moneys in the general fund. [1955 c 326 § 2.]

70.82.023 Cerebral palsy fund—Abolished. From and after the first day of May, 1955, the state cerebral palsy fund is abolished. [1955 c 326 § 3.]

70.82.024 Cerebral palsy fund—Warrants to be paid from general fund. From and after the first day of May, 1955, all warrants drawn on the state cerebral palsy fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he is hereby directed to pay such warrants when presented from the general fund. [1955 c 326 § 4.]

70.82.030 Eligibility. Any resident of this state who is educable but so severely handicapped as the result of cerebral palsy that he is unable to take advantage of the regular system of free education of this state may be admitted to or be eligible for any service and facilities provided hereunder, provided such resident has lived in this state continuously for more than one year before his application for such admission or eligibility. [1947 c 240 § 3; Rem. Supp. 1947 § 5547-2.]

70.82.040 Diagnosis. Persons shall be admitted to or be eligible for the services and facilities provided herein

only after diagnosis according to procedures and regulations established and approved for this purpose by the department of social and health services. [1974 ex.s. c 91 § 3; 1947 c 240 § 4; Rem. Supp. 1947 § 5547-3.]

Severability—Emergency—Effective date—1974 ex.s. c 91: See notes following RCW 70.82.010.

70.82.050 Powers, duties, functions, unallocated funds, transferred. All powers, duties and functions of the superintendent of public instruction or the state board of education relating to the Cerebral Palsy Center as referred to in chapter 39, Laws of 1973 2nd ex. sess. shall be transferred to the department of social and health services as created in chapter 43.20A RCW, and all unallocated funds within any account to the credit of the superintendent of public instruction or the state board of education for purposes of such Cerebral Palsy Center shall be transferred effective July 1, 1974 to the credit of the department of social and health services, which department shall hereafter expend such funds for such Cerebral Palsy Center purposes as contemplated in the appropriations therefor. All employees of the Cerebral Palsy Center on July 1, 1974 who are classified employees under chapter 41.06 RCW, the state civil service law, shall be assigned and transferred to the department of social and health services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law. [1974 ex.s. c 91 § 4.]

Severability—Emergency—Effective date—1974 ex.s. c 91: See notes following RCW 70.82.010.

Chapter 70.83

PHENYLKETONURIA AND OTHER PREVENTABLE HERITABLE DISORDERS

Sections

70.83.010	Declaration of policy and purpose.
70.83.020	Screening tests of newborn infants.
70.83.030	Report of positive test to department of social and health services.
70.83.040	Services and facilities of state agencies made available to families and physicians.
70.83.050	Rules and regulations to be adopted by state board of health.

70.83.010 Declaration of policy and purpose. It is hereby declared to be the policy of the state of Washington to make every effort to detect as early as feasible and to prevent where possible phenylketonuria and other preventable heritable disorders leading to developmental disabilities or physical defects. [1977 ex.s. c 80 § 40; 1967 c 82 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.83.020 Screening tests of newborn infants. It shall be the duty of the department of social and health services to require screening tests of all newborn infants

before they are discharged from the hospital for the detection of phenylketonuria and other heritable or metabolic disorders leading to mental retardation or physical defects as defined by the state board of health: *Provided*, That no such tests shall be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices. [1975-'76 2nd ex.s. c 27 § 1; 1967 c 82 § 2.]

70.83.030 Report of positive test to department of social and health services. Laboratories, attending physicians, hospital administrators, or other persons performing or requesting the performance of tests for phenylketonuria shall report to the department of social and health services all positive tests. The state board of health by rule and regulation shall, when it deems appropriate, require that positive tests for other heritable and metabolic disorders covered by this chapter be reported to the state department of social and health services by such persons or agencies requesting or performing such tests. [1979 c 141 § 113; 1967 c 82 § 3.]

70.83.040 Services and facilities of state agencies made available to families and physicians. When notified of positive screening tests, the state department of social and health services shall offer the use of its services and facilities, designed to prevent mental retardation or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the state department of social and health services, and other state and local agencies cooperating with the department of social and health services in carrying out programs of detection and prevention of mental retardation and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds. [1979 c 141 § 114; 1967 c 82 § 4.]

70.83.050 Rules and regulations to be adopted by state board of health. The state board of health shall adopt rules and regulations necessary to carry out the intent of this chapter. [1967 c 82 § 5.]

Sunset Act application: See note following RCW 43.20.030.

Chapter 70.84

BLIND, HANDICAPPED AND DISABLED PERSONS—"WHITE CANE LAW"

Sections

70.84.010	Declaration—Policy.
70.84.020	"Guide dog" defined.
70.84.030	Guide dog—Extra charge or refusing service because of prohibited.
70.84.040	Standard of care for drivers of motor vehicles—Blind pedestrians carrying white cane or using guide dog.
70.84.050	Blind pedestrians not carrying white cane or using guide dog—Rights and privileges.
70.84.060	Unauthorized use of white cane or guide dog.

70.84.070	Penalty for violations.
70.84.080	Employment of blind, visually and physically handicapped persons in public service.
70.84.900	Short title.

70.84.010 Declaration—Policy. The legislature declares:

(1) It is the policy of this state to encourage and enable the blind, the visually handicapped and the otherwise physically disabled to participate fully in the social and economic life of the state, and to engage in remunerative employment.

(2) As citizens, the blind, the visually handicapped, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places.

(3) The blind, the visually handicapped and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. [1969 c 141 § 1.]

70.84.020 "Guide dog" defined. For the purpose of this chapter, the term "guide dog" shall mean a dog which is in working harness and is trained or approved by an accredited school engaged in training dogs for the purpose of guiding blind persons. [1969 c 141 § 2.]

70.84.030 Guide dog—Extra charge or refusing service because of prohibited. Every totally or partially blind person shall have the right to be accompanied by a guide dog in any of the places listed in RCW 70.84.010(3) without being required to pay an extra charge for the guide dog. It shall be unlawful to refuse service to a blind person in any such place solely because he is accompanied by a guide dog. [1969 c 141 § 3.]

70.84.040 Standard of care for drivers of motor vehicles—Blind pedestrians carrying white cane or using guide dog. The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white in color (with or without a red tip) or using a guide dog shall take all necessary precautions to avoid injury to such blind pedestrian. Any driver who fails to take such precaution shall be liable in damages for any injury caused such pedestrian. It shall be unlawful for the operator of any vehicle to drive into or upon any crosswalk while there is on such crosswalk, any pedestrian wholly or partially blind, crossing or attempting to cross the roadway, if such pedestrian indicates his intention to cross or of continuing on, with a timely warning by holding up or waving a white cane, or using a guide dog. The failure of any such pedestrian so to signal shall not deprive him of the right of way accorded him by other laws. [1971 ex.s. c 77 § 1; 1969 c 141 § 4.]

70.84.050 Blind pedestrians not carrying white cane or using guide dog—Rights and privileges. A totally or partially blind pedestrian not carrying a white cane or using a guide dog in any of the places, accommodations, or conveyances listed in RCW 70.84.010, shall have all of the rights and privileges conferred by law on other persons. [1969 c 141 § 5.]

70.84.060 Unauthorized use of white cane or guide dog. It shall be unlawful for any pedestrian who is not totally or partially blind to use a white cane or guide dog in any of the places, accommodations, or conveyances listed in RCW 70.84.010 for the purpose of securing the rights and privileges accorded by the chapter to totally or partially blind people. [1969 c 141 § 6.]

70.84.070 Penalty for violations. Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities enumerated in RCW 70.84.010, or otherwise interferes with the rights of a totally or partially blind person as set forth in RCW 70.84.010 shall be guilty of a misdemeanor. [1969 c 141 § 7.]

70.84.080 Employment of blind, visually and physically handicapped persons in public service. In accordance with the policy set forth in RCW 70.84.010, the blind, the visually handicapped and the otherwise physically disabled shall be employed in the state service, in the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved. [1969 c 141 § 9.]

70.84.900 Short title. This chapter shall be known and may be cited as the "White Cane Law." [1969 c 141 § 11.]

Chapter 70.85

EMERGENCY PARTY LINE TELEPHONE CALLS—LIMITING TELEPHONE COMMUNICATION IN HOSTAGE SITUATIONS (Formerly: Party line telephones—Emergency calls)

Sections	
70.85.010	Definitions.
70.85.020	Refusal to yield line—Penalty.
70.85.030	Request for line on pretext of emergency—Penalty.
70.85.040	Telephone directories—Notice.
70.85.100	Authority to isolate telephones in hostage situation.
70.85.110	Telephone companies to provide contacting information.
70.85.120	Liability of telephone company.
70.85.130	Applicability.

Call to operator without charge or coin insertion be provided: RCW 80.36.225.

Fraud in operating coin-box telephone: RCW 9.45.180.

Telephone and telegraph companies: Chapter 80.36 RCW.

70.85.010 Definitions. "Party line" means a subscribers' line telephone circuit, consisting of two or more

main telephone stations connected therewith, each station with a distinctive ring or telephone number.

"Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential. [1953 c 25 § 1.]

70.85.020 Refusal to yield line—Penalty. Any person who shall wilfully refuse to yield or surrender the use of a party line to another person for the purpose of permitting such other person to report a fire or summon police, medical or other aid in case of emergency, shall be deemed guilty of a misdemeanor. [1953 c 25 § 2.]

70.85.030 Request for line on pretext of emergency—Penalty. Any person who shall ask for or request the use of a party line on pretext that an emergency exists, knowing that no emergency in fact exists, shall be deemed guilty of a misdemeanor. [1953 c 25 § 3.]

70.85.040 Telephone directories—Notice. After September 9, 1953, every telephone directory thereafter distributed to the members of the general public shall contain a notice which explains this chapter, such notice to be printed in type which is no smaller than any other type on the same page and to be preceded by the word "warning": *Provided*, That the provisions of this section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories. [1953 c 25 § 4.]

70.85.100 Authority to isolate telephones in hostage situation. The supervising law enforcement official having jurisdiction in a geographical area who reasonably believes that one or more hostages are being held within that area and who has probable cause to believe that the holder of such hostages is committing a crime may order a telephone company employee designated pursuant to RCW 70.85.110 to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communications between the hostage holder and any person other than a peace officer or a person authorized by the peace officer. [1979 c 28 § 1.]

70.85.110 Telephone companies to provide contacting information. The telephone company providing service within the geographical jurisdiction of a law enforcement unit shall inform law enforcement agencies of the address and telephone number of its security office or other designated office to provide all required assistance to law enforcement officials to carry out the purpose of RCW 70.85.100 through 70.85.130. The designation shall be in writing and shall provide the telephone number or numbers through which the security representative or other telephone company official can be reached at any time. This information shall be served upon all law enforcement units having jurisdiction in a geographical area. Any change in address or telephone number or identity of the telephone company office to be contacted to provide required assistance shall be served upon all law enforcement units in the affected geographical area. [1979 c 28 § 2.]

70.85.120 Liability of telephone company. Good faith reliance on an order given under RCW 70.85.100 through 70.85.130 by a supervising law enforcement official shall constitute a complete defense to any civil or criminal action arising out of such ordered cutting, re-routing or diverting of telephone lines. [1979 c 28 § 3.]

70.85.130 Applicability. RCW 70.85.100 through 70.85.120 will govern notwithstanding the provisions of any other section of this chapter and notwithstanding the provisions of chapter 9.73 RCW. [1979 c 28 § 4.]

Chapter 70.86

EARTHQUAKE RESISTANCE STANDARDS

Sections

70.86.010	Definitions.
70.86.020	Buildings to resist earthquake intensities.
70.86.030	Standards for design and construction.
70.86.040	Penalty.

70.86.010 Definitions. The word "person" includes any individual, corporation, or group of two or more individuals acting together for a common purpose, whether acting in an individual, representative, or official capacity. [1955 c 278 § 1.]

70.86.020 Buildings to resist earthquake intensities. Hospitals, schools, except one story, portable, frame school buildings, buildings designed or constructed as places of assembly accommodating more than three hundred persons; and all structures owned by the state, county, special districts, or any municipal corporation within the state of Washington shall hereafter be designed and constructed to resist probable earthquake intensities at the location thereof in accordance with RCW 70.86.030, unless other standards of design and construction for earthquake resistance are prescribed by enactments of the legislative authority of counties, special districts, and/or municipal corporations in which the structure is constructed. [1955 c 278 § 2.]

70.86.030 Standards for design and construction. Structural frames, exterior walls, and all appendages of the buildings described in RCW 70.86.020, whose collapse will endanger life and property shall be designed and constructed to withstand horizontal forces from any direction of not less than the following fractions of the weight of the structure and its parts acting at the centers of gravity:

Western Washington 0.05. [1955 c 278 § 3.]

70.86.040 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor: *Provided*, That any person causing such a building to be built shall be entitled to rely on the certificate of a licensed professional engineer and/or registered architect that the standards of design set forth above have been met. [1955 c 278 § 4.]

Chapter 70.87

ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

Sections

70.87.010	Definitions.
70.87.020	Conveyances to be safe and in conformity with law.
70.87.030	Director of labor and industries to administer—Rules and regulations.
70.87.040	Privately and publicly owned conveyances are subject to chapter.
70.87.050	Conveyances in buildings occupied by state, county or political subdivision.
70.87.060	Responsibility for operation and maintenance of equipment and for periodic tests.
70.87.070	Serial numbers.
70.87.080	Installation permits—When required—Application for—Posting.
70.87.090	Operating permits—Limited permits—Duration—Posting—Revocation.
70.87.100	Acceptance tests.
70.87.110	Exceptions authorized.
70.87.120	Inspectors—Inspections and reinspections—Order to discontinue use.
70.87.140	Operation without permit enjoined.
70.87.150	Noncompliance with inspection report—Hearing to show cause.
70.87.160	Noncompliance with inspection report—Order pursuant to hearing—Rehearing—Judicial review as for safety orders.
70.87.170	Judicial review of orders in accordance with administrative procedure act.
70.87.180	Violations—Penalties.
70.87.190	Accidents—Report and investigation—Cessation of use—Removal of damaged parts.
70.87.200	Exemptions.
70.87.210	Disposition of revenue.
70.87.900	Severability—1963 c 26.

State building code: Chapter 19.27 RCW.

70.87.010 Definitions. For the purposes of this chapter, except where a different interpretation is required by the context:

(1) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee or otherwise;

(2) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator and moving walk, all as defined herein;

(3) "Existing installations" means all conveyances for which plans were completed and accepted by the owner, or the plans and specifications for which have been filed with and approved by the department of labor and industries before the *effective date of this chapter and work on the erection of which was begun not more than twelve months thereafter;

(4) "Elevator" means a hoisting or lowering machine equipped with a car or platform which moves in guides in a substantially vertical direction and which serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator on which passengers are permitted to ride and may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator used primarily for carrying freight and on which only the operator, the persons necessary for loading and unloading and

such employees as may be approved by the department of labor and industries are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator which operates between a sidewalk or other area exterior to the buildings and floor levels inside the building below such area, which has no landing opening into the building at its upper limit of travel and which is not used to carry automobiles;

(5) "Escalator" means a power driven, inclined, continuous stairway used for raising and lowering passengers;

(6) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine square feet, whose total inside height, whether or not provided with fixed or removable shelves, does not exceed four feet, the capacity of which does not exceed five hundred pounds and is used exclusively for carrying materials;

(7) "Automobile parking elevator" means an elevator located in either a stationary or horizontally moving hoistway and used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator and where no persons are normally stationed on any level except the receiving level;

(8) "Moving walk" means a type of passenger carrying device on which passengers stand or walk and whose passenger carrying surface remains parallel to its direction of motion;

(9) "Belt manlift" means a device consisting of a power driven endless belt provided with steps or platforms and hand hold attached to it for the transportation of personnel from floor to floor;

(10) "Division" means the division of industrial safety and health of the department of labor and industries;

(11) "Supervisor" means the supervisor, of the division of industrial safety and health of the department of labor and industries;

(12) "Inspector" means any safety or elevator inspector of the division including assistant and deputy inspectors, or the mechanical or elevator inspectors of the municipality having in effect an elevator ordinance as hereinafter set forth;

(13) "Permit" means a permit issued by the supervisor to construct, install or operate a conveyance.

(14) "One man capacity manlift" means a single passenger, hand powered counterweighted device, or electric powered device, which travels vertically in guides and serves two or more landings. [1973 1st ex.s. c 52 § 9; 1969 ex.s. c 108 § 1; 1963 c 26 § 1.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

Effective date—1963 c 26: The "effective date of this chapter" was June 13, 1963, see preface, 1963 session laws.

70.87.020 Conveyances to be safe and in conformity with law. The purpose of this chapter is to provide for the safe mechanical and electrical operation, erection,

installation, alteration, inspection, and repair of conveyances, and all such operation, erection, installation, alteration, inspection, and repair subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington, and all orders, rules and regulations of the department of labor and industries issued by authority thereof. Conformity in this respect with the applicable rules and regulations set forth in the American Standard Safety Code for Elevators, Dumbwaiters and Escalators shall be prima facie evidence that such operation, erection, installation, alteration, inspection and repair is reasonably safe to persons and property. [1963 c 26 § 2.]

70.87.030 Director of labor and industries to administer—Rules and regulations. The director of the department of labor and industries shall administer this chapter through the supervisor of the division of building and construction safety inspection services: *Provided*, That, except for the new construction thereof, all hand-powered elevators, belt manlifts, and one-man capacity manlifts installed in or on grain elevators shall be the responsibility of the division of industrial safety and health of the department of labor and industries. The supervisor shall promulgate and adopt such rules and regulations governing the mechanical and electrical operation, erection, installation, alterations, inspection, acceptance tests, and repair of conveyances as may be necessary and appropriate and shall also promulgate and adopt minimum standards governing existing installations: *Provided*, That in the execution of this rule making power and prior to the promulgation and adoption of rules and regulations by the supervisor, he shall consider generally the rules and regulations for the safe mechanical operation, erection, installation, alteration, inspection, and repair of conveyances, including the American Standard Safety Code for Elevators, Dumbwaiters and Escalators, and any amendatory or supplemental provisions thereto, and he shall be guided by the provisions thereof where pertinent and consistent with the purposes of this chapter. The director of the department of labor and industries by rule and regulation shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter shall limit the authority of the division to prescribe or enforce general or special safety orders as provided by law. [1973 1st ex.s. c 52 § 10; 1971 c 66 § 1; 1970 ex.s. c 22 § 1; 1963 c 26 § 3.]

Effective date—1973 1st ex.s. c 52: See RCW 43.22.010.

70.87.040 Privately and publicly owned conveyances are subject to chapter. All privately owned conveyances and all publicly owned conveyances are subject to the provisions of this chapter except as hereinafter specifically excluded. [1963 c 26 § 4.]

70.87.050 Conveyances in buildings occupied by state, county or political subdivision. The operation, erection, installation, alteration, inspection, and repair of any conveyance located in, or used in connection with

any building owned by the state, county, or any political subdivision not otherwise exempted by this chapter, even though located within a city having an elevator code, shall be under the jurisdiction of the Washington state department of labor and industries. [1969 ex.s. c 108 § 2; 1963 c 26 § 5.]

70.87.060 Responsibility for operation and maintenance of equipment and for periodic tests. (1) The person or firm installing, relocating or altering any conveyance shall be responsible for its operation and maintenance until the operating permit therefor has been issued by the supervisor except during the period when any limited operating permit as defined in RCW 70.87.090(2) shall be in effect, and shall also be responsible for all tests of new, relocated, and altered equipment until the operating permit thereof has been issued by the supervisor.

(2) The owner or his duly appointed agent shall be responsible for the safe operation and proper maintenance of the conveyance after the operating permit has been issued by the supervisor and also during the period of effectiveness of any limited operating permit as defined in RCW 70.87.090(2). The owner shall be responsible for all periodic tests required by the supervisor. [1963 c 26 § 6.]

70.87.070 Serial numbers. All new and existing conveyances shall have a serial number painted on or attached as directed by the supervisor. This serial number shall be assigned by the supervisor and shown on all required permits. [1963 c 26 § 7.]

70.87.080 Installation permits—When required—Application for—Posting. (1) An installation permit shall be obtained from the supervisor before erecting, installing, relocating, or altering a conveyance.

(2) The installer of the conveyance shall submit an application for such permit in duplicate, in such form as the supervisor may prescribe.

(3) The permit issued by the supervisor shall be kept posted conspicuously at the site of installation.

(4) No permit shall be required for repairs and replacement normally necessary for maintenance and made with parts of equivalent materials, strength and design. [1963 c 26 § 8.]

70.87.090 Operating permits—Limited permits—Duration—Posting—Revocation. (1) An operating permit shall be required for each conveyance operated in the state of Washington except during its erection by the person or firm responsible for its installation. A permit issued by the supervisor shall remain in effect and be kept conspicuously posted near the conveyance or in the machine room thereof.

(2) The supervisor may permit the temporary use of any conveyance during its installation or alteration, under the authority of a limited permit issued by the supervisor for each class of service. Limited permits shall be issued for a period not to exceed thirty days and may be renewed at the discretion of the supervisor. Where a limited permit is issued, a notice bearing the information

that the equipment has not been finally approved shall be conspicuously posted.

(3) The supervisor may at any time and after giving notice and an opportunity to be heard in accordance with the provisions of chapter 34.04 RCW, in the interest of safety, revoke any current permit to operate a conveyance. [1963 c 26 § 9.]

70.87.100 Acceptance tests. (1) The person or firm installing, relocating or altering conveyances shall notify the supervisor in writing, at least seven days before completion of the work, and shall subject the new, moved, or altered portions of the equipment to the acceptance tests.

(2) All new, altered, or relocated conveyances where a permit has been issued, shall be inspected for compliance with the requirements of this chapter by an inspector in the employ of the division who shall also witness the test specified. [1963 c 26 § 10.]

70.87.110 Exceptions authorized. The requirements of this chapter are intended to apply to all conveyance installations except as modified or waived by the supervisor. They are intended to be modified or waived whenever any requirements are shown to be impracticable, such as involving expense not justified by the protection secured: *Provided*, That equivalent or safer construction is secured in other ways. Such exceptions shall apply only to the installation covered by the application for waiver. [1963 c 26 § 11.]

70.87.120 Inspectors—Inspections and reinspections—Order to discontinue use. (1) The supervisor shall appoint and employ inspectors, as may be necessary to carry out the provisions of this chapter, under the provisions of the rules and regulations adopted by the state personnel board in accordance with chapter 41.06 RCW.

(2) The supervisor shall cause all conveyances to be inspected and tested at least once each year. Inspectors shall have the right during reasonable hours to enter into and upon any building or premises in the discharge of their official duties, for the purpose of making any inspection or testing any conveyance contained thereon or therein. Inspections and tests shall conform with the rules and regulations promulgated and adopted by the supervisor. All installations shall be inspected by the supervisor before any initial permit for operation shall be issued. Permits shall not be issued until the fees herein have been paid.

(3) If inspection shows a conveyance to be in an unsafe condition, the supervisor shall issue an inspection report in writing requiring the repairs or alterations to be made to the conveyance which are necessary to render it safe, and may order the operation thereof discontinued until the repairs or alterations are made or the unsafe conditions are removed. [1970 ex.s. c 22 § 2; 1963 c 26 § 12.]

Schedule of fees, establishment: RCW 70.87.030.

70.87.140 Operation without permit enjoined. Whenever any conveyance is being operated without the

permit herein required, the attorney general or the prosecuting attorney of the county may apply to the superior court of the county in which the conveyance is located for an injunction restraining the operation thereof until such condition is corrected. No bond shall be required from the division in such proceedings. [1963 c 26 § 14.]

70.87.150 Noncompliance with inspection report—Hearing to show cause. If all corrections stated on the inspection report are not complied with, a hearing before the supervisor may be held at the supervisor's request in accordance with the provisions of chapter 34.04 RCW, at which the owner, operator, or other person in charge of the conveyance shall appear and show cause why he should not comply with the report. Failure to do so, without sufficient reasons, will be prima facie evidence of noncompliance. [1963 c 26 § 15.]

70.87.160 Noncompliance with inspection report—Order pursuant to hearing—Rehearing—Judicial review as for safety orders. If it appears to the supervisor after hearing that the conveyance is unsafe and that the requirements contained in the inspection report should be complied with or that other things should be done to make such equipment safe, the supervisor may order or confirm the withholding of the permit and may make such requirements as he deems proper for repair or alterations and for the correction of such unsafe conditions. Such orders may thereafter be reheard by the supervisor or reviewed by the courts in the manner specified for safety orders of the division. [1963 c 26 § 16.]

Judicial review of safety orders: RCW 49.17.150.

70.87.170 Judicial review of orders in accordance with administrative procedure act. Any person aggrieved by any order of the supervisor may have the same reviewed by the courts in accordance with the provisions of chapter 34.04 RCW. [1963 c 26 § 17.]

70.87.180 Violations—Penalties. (1) The construction, installation, relocation, alteration, or operation of a conveyance by any person owning or having the custody, management or operation thereof without a permit except as provided in RCW 70.87.080 and 70.87.090 is a misdemeanor and shall be punishable by a fine not to exceed two hundred fifty dollars, or ninety days in the county jail. Each day of violation shall be a separate offense. No prosecution shall be maintained where the issuance or renewal of a permit has been requested but upon which no action has been taken by the supervisor.

(2) Every person who shall wilfully or continuously violate or fail to comply with any rule or regulation of the division promulgated under authority of this chapter, shall be punished by a penalty of not more than two hundred fifty dollars. [1963 c 26 § 18.]

70.87.190 Accidents—Report and investigation—Cessation of use—Removal of damaged parts. The owner or his duly authorized agent shall promptly notify the supervisor of each and every accident to a person requiring the service of a physician or disability

exceeding one day, and shall afford the supervisor every facility for investigating and inspecting such accident. The supervisor shall without delay, after being notified, make an inspection and shall have placed on file a full and complete report of such accident. Such report shall give in detail all material facts and information available and the cause or causes, so far as they can be determined. The report shall be open to public inspection at all reasonable hours. When an accident involves the failure or destruction of any part of the construction or the operating mechanism of a conveyance, the use of such device is forbidden until it has been made safe and until it has been reinspected and any repairs, changes, or alterations have been approved by the supervisor and a permit on such a form as he may prescribe has been issued by him. The removal of any part of the damaged construction or operating mechanism from the premises is forbidden until permission to do so has been granted by the supervisor. [1963 c 26 § 19.]

70.87.200 Exemptions. The provisions of this chapter shall not apply where:

(1) A conveyance is permanently removed from service and/or made effectively inoperative or to lifts, man hoists or material hoists which are erected temporarily for use during or for the duration of construction work only and are of such design that they must be operated by a workman stationed at the hoisting machine.

(2) Municipalities having in effect an elevator code prior to the adoption of the original act of 1963 may continue to assume jurisdiction over the operation, erection, installation, alteration or repair of elevators, escalators, dumbwaiters, moving walks, manlifts and parking elevators and may inspect, issue permits, collect fees and prescribe minimum requirements for the construction, design, use and maintenance of such conveyances providing such requirements are equal to or in conformity with the requirements of this chapter and to all rules and regulations pertaining to such conveyances as adopted and administered by the Washington state department of labor and industries. Upon the failure of any municipality to carry out the provisions of this chapter with regard to any conveyances or conveyance the Washington state department of labor and industries may assume jurisdiction over any such conveyances. A municipality upon electing not to maintain jurisdiction over certain conveyances located therein, may mutually enter into a written agreement with the Washington state department of labor and industries transferring exclusive jurisdiction of such conveyances to said department. [1969 ex.s. c 108 § 4; 1963 c 26 § 20.]

70.87.210 Disposition of revenue. All moneys received or collected under the terms of this chapter shall be deposited in the general fund. [1963 c 26 § 21.]

70.87.900 Severability—1963 c 26. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 26 § 22.]

Chapter 70.88

CONVEYANCES FOR PERSONS IN
RECREATIONAL ACTIVITIES

Sections

70.88.010	Safe and adequate facilities and equipment required of owner and operator—Operator not common carrier.
70.88.020	Plans, specifications to be submitted to state parks and recreation commission—Approval—Penalty.
70.88.030	Orders directing repairs, improvements, changes, etc.—Notice—Forbidding operation.
70.88.040	Penalty for violation of chapter or rules, etc., of parks and recreation commission.
70.88.050	Inspector of recreational devices—Employees.
70.88.060	Powers and duties of inspector—Condemnation of equipment—Annual inspection.
70.88.070	Costs of inspection—Lien—Disposition of funds.
70.88.080	State immunity from liability—Actions deemed exercise of police power.
70.88.090	Rules, regulations, and codes.
70.88.100	Judicial review.

70.88.010 Safe and adequate facilities and equipment required of owner and operator—Operator not common carrier. Every owner or operator of any recreational device designed and operated for the conveyance of persons which aids in promoting entertainment, pleasure, play, relaxation, or instruction, specifically including devices generally associated with winter sports activities such as ski lifts, ski tows, j-bars, t-bars, ski mobiles, chair lifts, and similar devices and equipment, shall construct, furnish, maintain, and provide safe and adequate facilities and equipment with which safely and properly to receive and transport all persons offered to and received by the owner or operator of such devices, and to promote the safety of such owner's or operator's patrons, employees and the public. The owner or operator of the devices and equipment covered by this section shall be deemed not to be a common carrier. [1965 ex.s. c 85 § 1; 1961 c 253 § 1; 1959 c 327 § 1.]

70.88.020 Plans, specifications to be submitted to state parks and recreation commission—Approval—Penalty. It shall be unlawful after the *effective date of this chapter to construct or install any such recreational device as set forth in RCW 70.88.010 without first submitting plans and specifications for such device to the state parks and recreation commission and receiving the approval of the commission for such construction or installation. Violation of this section shall be a misdemeanor. [1959 c 327 § 2.]

*Effective date—1959 c 327: The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

70.88.030 Orders directing repairs, improvements, changes, etc.—Notice—Forbidding operation. The state parks and recreation commission shall have the authority and the responsibility for the inspection of the devices set forth in RCW 70.88.010 and in addition shall have the following powers and duties:

(1) Whenever the commission, after hearing called upon its own motion or upon complaint, finds that additional apparatus, equipment, facilities or devices for use or in connection with the transportation or conveyance

of persons upon the devices set forth in RCW 70.88.010, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security and safety of the public or employees, it may make and serve an order directing such repairs, improvements, changes, or additions to be made.

(2) If the commission finds that the equipment, or appliances in connection therewith, or the apparatus, or other structures of the recreational device set forth in RCW 70.88.010 are defective, and that the operation thereof is dangerous to the employees of the owner or operator of such device or to the public, it shall immediately give notice to the owner or operator of such device of the repairs or reconstruction necessary to place the same in a safe condition, and may prescribe the time within which they shall be made. If, in its opinion, it is needful or proper, the commission may forbid the operation of the device until it is repaired and placed in a safe condition. [1959 c 327 § 3.]

70.88.040 Penalty for violation of chapter or rules, etc., of parks and recreation commission. Any violation of this chapter or the rules, regulations and codes of the state parks and recreation commission relating to public safety in the construction, operation and maintenance of the recreational devices provided for in this chapter shall be a misdemeanor. [1965 ex.s. c 85 § 2; 1959 c 327 § 4.]

70.88.050 Inspector of recreational devices—Employees. The state parks and recreation commission shall employ or retain a person qualified in engineering experience and training who shall be designated as the inspector of recreational devices, and may employ such additional employees as are necessary to properly administer this chapter. The inspector and such additional employees may be hired on a temporary basis or borrowed from other state departments, or the commission may contract with individuals or firms for such inspecting service on an independent basis. The commission shall prescribe the salary or other remuneration for such service. [1959 c 327 § 5.]

70.88.060 Powers and duties of inspector—Condemnation of equipment—Annual inspection. The inspector of recreational devices and his assistants shall inspect all equipment and appliances connected with the recreational devices set forth in RCW 70.88.010 and make such reports of his inspection to the commission as may be required. He shall, on discovering any defective equipment, or appliances connected therewith, rendering the use of the equipment dangerous, immediately report the same to the owner or operator of the device on which it is found, and in addition report it to the commission. If in the opinion of the inspector the continued operation of the defective equipment constitutes an immediate danger to the safety of the persons operating or being conveyed by such equipment, the inspector may condemn such equipment and shall immediately notify the commission of his action in this respect: *Provided*, That

inspection required by this chapter must be conducted at least once each year. [1959 c 327 § 6.]

70.88.070 Costs of inspection—Lien—Disposition of funds. The expenses incurred in connection with making inspections under this chapter shall be paid by the owner or operator of such recreational devices either by reimbursing the commission for the costs incurred or by paying directly such individuals or firms that may be engaged by the commission to accomplish the inspection service. Payment shall be made only upon notification by the commission of the amount due. The commission shall maintain accurate and complete records of the costs incurred for each inspection and shall assess the respective owners or operators of said recreational devices only for the actual costs incurred by the commission for such safety inspections. The costs as assessed by the commission shall be a lien on the equipment of the owner or operator of the recreational devices so inspected. Such moneys collected by the commission hereunder shall be paid into the parks and parkways account of the general fund. [1975 1st ex.s. c 74 § 1; 1961 c 253 § 2; 1959 c 327 § 7.]

70.88.080 State immunity from liability—Actions deemed exercise of police power. Inspections, rules, and orders of the department resulting from the exercise of the provisions of this chapter shall not in any manner be deemed to impose liability upon the state for any injury or damage resulting from the operation of the facilities regulated by this chapter, and all actions of the department and its personnel shall be deemed to be an exercise of the police power of the state. [1959 c 327 § 8.]

70.88.090 Rules, regulations, and codes. The state parks and recreation commission is empowered to adopt reasonable rules, regulations, and codes relating to public safety in the construction, operation and maintenance of the recreational devices provided for in this chapter. The rules, regulations and codes authorized hereunder shall be in accordance with established standards, if any, and shall not be discriminatory in their application. [1959 c 327 § 9.]

70.88.100 Judicial review. The procedure for review of the orders or actions of the state parks and recreation commission, its agents or employees, shall be the same as that contained in RCW 81.04.170, 81.04.180, and 81.04.190. [1959 c 327 § 10.]

- 70.89.050 Employees not liable.
- 70.89.060 Local ordinances superseded.
- 70.89.070 Enforcement of chapter.
- 70.89.900 Severability—1963 c 128.
- 70.89.910 Construction, effective date, prospective application—1973 1st ex.s. c 2.

70.89.005 Purpose. The purpose of this chapter is to protect the consumer by reducing the high incidence of accidental injuries and deaths resulting from the use of ordinary annealed glass or substitutes therefor in hazardous locations. The legislature intends to provide to the homeowner, his family and guests, and to the general public, greater safety by prescribing the labeling and use of safety glazing material in hazardous locations in residential, commercial, industrial, and public buildings. [1973 1st ex.s. c 2 § 1.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.010 Safety glazing material defined—Types—Tests—Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Safety glazing material" means glazing materials, such as tempered glass, laminated glass, or wire glass which meet the test requirements of the American national standards institute standard ANSI-97.1-1972 and such additional requirements as may be prescribed by the director of the department of labor and industries after notice and hearing as required by chapter 34.04 RCW (the administrative procedure act), and which are so constructed, treated or combined with other materials as to minimize the likelihood of injury to persons by these safety glazing materials when they may be cracked or broken.

Materials other than glass which have properties supported by performance data may be approved by the director for use as glazing material.

(2) "Hazardous locations" means those structural elements, glazed or to be glazed in industrial, commercial and public buildings, known as framed or unframed glass entrance doors; and those structural elements, glazed or to be glazed in residential buildings and other structures used as dwellings, industrial buildings, commercial buildings, and public buildings, known as sliding glass doors, storm doors, shower doors, bathtub enclosures, and those fixed glazed panels immediately adjacent to entrance and exit doors which may be mistaken for doors; and any other structural elements, glazed or to be glazed, wherein the use of other than safety glazing materials would constitute an unreasonable hazard as the director of the department of labor and industries may determine after notice and hearings as required by chapter 34.04 RCW (the administrative procedure act); whether or not the glazing in such doors, panels, enclosures and other structural elements is transparent: *Provided, however,* That the replacement of opaque, nontransparent panels in buildings which are completed prior to the effective date of this amendatory act shall not be subject to the provisions of *the act.

(3) "Commercial buildings" means buildings known as wholesale and retail stores and storerooms, and office buildings.

Chapter 70.89

SAFETY GLAZING MATERIAL

Sections	
70.89.005	Purpose.
70.89.010	Safety glazing material defined—Types—Tests—Definitions.
70.89.021	Safety glazing material for use in hazardous locations—Labeling requirements.
70.89.031	Sale, fabrication, assembly, installation of other than safety glazing materials in hazardous locations unlawful.
70.89.040	Penalty.

(4) "Public buildings" means buildings known as hotels, hospitals, motels, sanitariums, nursing homes, theatres, stadiums, gymnasiums, amusement park buildings, schools and other buildings used for educational purposes, museums, restaurants, bars, and other buildings of public assembly.

(5) "Residential buildings" means buildings, known as homes, apartments, and dormitories used as dwellings for one or more families or persons.

(6) "Other structures used as dwellings" means mobile homes, manufactured or industrialized housing and lodging homes.

(7) "Industrial buildings" means buildings known as factories.

(8) "Commercial entrance and exit door" means a hinged, pivoting, revolving, or sliding door which is glazed or to be glazed and used alone or in combination with other doors on the interior or exterior wall of a commercial or public building as a means of ingress or egress.

(9) "Primary residential entrance and exit door" means a door (other than doors covered by subsection (10) of this section) which is glazed or to be glazed and used in the exterior wall of a residential building as a means of ingress or egress.

(10) "Storm or combination door" means a door which is glazed or to be glazed, and used in tandem with a primary residential or commercial entrance and exit door to protect the primary residential or commercial entrance or exit door against weather elements and to improve indoor climate control.

(11) "Bathtub enclosure" means a sliding, pivoting, or hinged door and fixed panels which are glazed or to be glazed and used to form a barrier between the bathtub and the rest of the room areas.

(12) "Shower enclosure" means a hinged, pivoting, or sliding door and fixed panels which are glazed or to be glazed and used to form a barrier between the shower stall and the rest of the room area.

(13) "Sliding glass door units" means an assembly of glazed or to be glazed panels contained in an overall frame installed in residential, commercial or public buildings, and which assembly is so designed that one or more of the panels is movable in a horizontal direction to produce or close off an opening for use as a means of ingress or egress.

(14) "Fixed flat glazed panels immediately adjacent to entrance or exit doors" means the first fixed flat glazed panel on either or both sides of interior or exterior doors, between eighteen and forty-eight inches in width, within six feet horizontally of the nearest vertical edge of the door, but shall not include any glass panel more than eighteen inches above the finished floor walking surface.

(15) "Glazing" means the act of installing and securing glass or other glazing material into prepared openings in structural elements such as doors, enclosures, and panels.

(16) "Glazed" means the accomplished act of glazing.

(17) "Director" means the director of the department of labor and industries of the state of Washington. [1973 1st ex.s. c 2 § 2; 1963 c 128 § 1.]

*Reviser's note: "the act" apparently refers to 1973 1st ex.s. c 2 which consists of RCW 70.89.005, 70.89.021, 70.89.031, 70.89.050-70.89.070 and 70.89.910, the amendments to RCW 70.89.010 and 70.89.040, and to the repeal of RCW 70.89.020 and 70.89.030.

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.021 Safety glazing material for use in hazardous locations—Labeling requirements. (1) All safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the state of Washington shall be permanently labeled by such means as etching, sandblasting, firing of ceramic material, hot-die stamping, on the safety glazing material, or by other suitable means. Each light of safety glazing material installed in a hazardous location within the state, shall have attached a transparent label which shall identify the labeler, whether the manufacturer or installer, and state that "safety glazing material" has been utilized in such installation. The label shall be legible and visible from the inside of the building after installation and shall specify that the label shall not be removed.

The label must be legible and visible after installation.

(2) Such safety glazing labeling shall not be used on other than safety glazing materials.

(3) Permanent labeling of wire glass shall not be required where the seller or installer of such wire glass furnishes to each buyer thereof a certificate stating that such wire glass meets the test requirements set forth in RCW 70.89.010, as now or hereafter amended, when such alternate method is approved by the director of the department of labor and industries. [1973 1st ex.s. c 2 § 3.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.031 Sale, fabrication, assembly, installation of other than safety glazing materials in hazardous locations unlawful. It shall be unlawful within the state of Washington to knowingly sell, fabricate, assemble, glaze or install glazing materials other than safety glazing materials in, or for use in, any hazardous location. [1973 1st ex.s. c 2 § 4.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.040 Penalty. The violation of any provision of this chapter shall constitute a misdemeanor. [1973 1st ex.s. c 2 § 8; 1963 c 128 § 4.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.050 Employees not liable. No liability under this chapter shall be created as to workmen who are employees of a contractor, subcontractor, or other employer responsible for compliance with this chapter. [1973 1st ex.s. c 2 § 5.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.060 Local ordinances superseded. This chapter shall supersede any local, municipal or county ordinance or parts thereof relating to the subject matter hereof. [1973 1st ex.s. c 2 § 6.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.070 Enforcement of chapter. Each city, county, or department, agency, or other authority of the state of Washington which inspects the new construction or remodeling of residential, commercial, industrial, or public structures shall in their respective jurisdictions be responsible for the enforcement of this chapter and any regulations made pursuant thereto. [1973 1st ex.s. c 2 § 7.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.900 Severability—1963 c 128. If any provision of this chapter, or its application to any person or circumstance is held to be invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 128 § 5.]

70.89.910 Construction, effective date, prospective application—1973 1st ex.s. c 2. It is the intent of the legislature that the application of *this act shall be prospective only. The provisions of *this 1973 amendatory act shall not take effect until January 1, 1974, and shall not apply to contracts awarded on or before the effective date of *this act: *Provided*, That except for replacement or new installations of materials *this 1973 amendatory act shall not apply to buildings or construction completed prior to the effective date of *this act. [1973 1st ex.s. c 2 § 10.]

*Reviser's note: "this act", "this 1973 amendatory act", see note following RCW 70.89.010.

Chapter 70.90 SWIMMING POOLS

Sections	
70.90.010	Definitions.
70.90.020	Construction, alteration—Plans and specifications to be approved by secretary.
70.90.030	Rules and regulations.
70.90.040	Enforcement—Penalty.
70.90.900	Application of chapter.

70.90.010 Definitions. (1) The term "swimming pool" as used in this chapter shall mean an artificial pool of water used for swimming or recreational bathing, together with buildings and appurtenances in connection therewith, and shall be construed as including all pools of water used for swimming or recreational bathing in which it is necessary to employ such measures as the addition of clean water or disinfectant or both for the purpose of maintaining water quality standards.

(2) The term "wading pool" shall mean any artificial pool of water for wading purposes.

(3) The term "spray pool" shall mean a pool or artificially constructed depression for use by children, into which water is sprayed but is not allowed to pond in the bottom of the pool.

(4) The term "health officer" shall mean the city, county or district health officer.

(5) The term "secretary" shall mean the secretary of social and health services of the state of Washington.

(6) The term "public pool" shall include any swimming pool owned or operated by the state of Washington or any of its political subdivisions or is a pool generally available to the general public upon the payment of a specific admission charge for the use of the same, and shall include pools maintained by hotels, motels or private clubs as an additional facility for members or guests where the same is fifteen hundred square feet or more in surface area.

(7) The term "semipublic pool" shall mean a pool provided by a hotel, motel or private club as an additional facility for members or guests where the same is less than fifteen hundred square feet in surface area.

(8) The term "private pool" shall mean a swimming pool, wading pool or spray pool maintained by an individual for the use of his family and friends. [1979 c 141 § 115; 1957 c 57 § 1.]

70.90.020 Construction, alteration—Plans and specifications to be approved by secretary. No municipality, person, firm or corporation shall construct a public or semipublic swimming pool, nor make changes in any public or semipublic swimming pool already built, or in the appurtenances thereof, until the plans and specifications therefor shall first have been submitted to and received the approval of the secretary. The secretary may stipulate as a condition of such approval such modifications or conditions not inconsistent with this chapter as the public health or safety may require. [1979 c 141 § 116; 1957 c 57 § 2.]

70.90.030 Rules and regulations. The secretary is authorized and empowered to make any rules and regulations not inconsistent herewith relative to water quality, disinfection, sanitation and sanitary control of public and semipublic swimming pools, wading pools and spray pools as are reasonably necessary to the protection of the public health and safety: *Provided*, That such regulations shall not require the installation of overflow troughs or scum gutters in semipublic pools provided other suitable devices of suitable number, type and location, as prescribed by the secretary, shall be provided therefor, nor shall said regulations require recirculation equipment producing a complete turnover of the contents of semipublic pools at a greater rate than once every twelve hours. [1979 c 141 § 117; 1957 c 57 § 3.]

70.90.040 Enforcement—Penalty. The health officer of every city, county or district is empowered to enforce the provisions of this chapter and the needful rules and regulations promulgated by the secretary pursuant hereto, and the violation of any such rules or regulations shall be a misdemeanor punishable by a fine of not more than three hundred dollars. [1979 c 141 § 118; 1957 c 57 § 4.]

70.90.900 Application of chapter. The provisions of this chapter shall not apply to private pools. [1957 c 57 § 5.]

Chapter 70.92

PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS

(Formerly: Public buildings—Provision for aged and handicapped)

Sections

70.92.100	Legislative intent.
70.92.110	Buildings and structures to which standards and specifications apply—Exemptions.
70.92.120	Handicap symbol—Display—Signs showing location of entrance for handicapped.
70.92.130	Definitions.
70.92.140	Minimum standards for facilities—Adoption—Facilities to be included.
70.92.150	Standards adopted by other states to be considered—Majority vote.
70.92.160	Waiver from compliance with standards.

American national standard specifications for making buildings and facilities accessible to and usable by handicapped persons: RCW 19.27.030(5).

70.92.100 Legislative intent. It is the intent of the legislature that, notwithstanding any law to the contrary, plans and specifications for the erection of buildings through the use of public or private funds shall make special provisions for elderly or physically disabled persons. [1975 1st ex.s. c 110 § 1.]

70.92.110 Buildings and structures to which standards and specifications apply—Exemptions. The standards and specifications adopted under this chapter shall, as provided in this section, apply to buildings, structures, or portions thereof used primarily for group A through group H occupancies, as defined in the Washington state building code. All such buildings, structures, or portions thereof, which are constructed, substantially remodeled, or substantially rehabilitated after July 1, 1976, shall conform to the standards and specifications adopted under this chapter: *Provided*, That the following buildings, structures, or portions thereof shall be exempt from this chapter:

(1) Buildings, structures, or portions thereof for which construction contracts have been awarded prior to July 1, 1976;

(2) Any building, structure, or portion thereof in respect to which the administrative authority deems, after considering all circumstances applying thereto, that full compliance is impracticable: *Provided*, That, such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: *Provided further*, That the board of appeals provided for in section 204 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein;

(3) Any building or structure used solely for dwelling purposes and which contains not more than two dwelling units;

(4) Any building or structure not used primarily for group A through group H occupancies as set forth in the Washington state building code; or

(5) Apartment houses with ten or fewer units. [1975 1st ex.s. c 110 § 2.]

70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped. All buildings built in accordance with the standards and specifications provided for in this chapter, and containing facilities that are in compliance therewith, shall display the following symbol which is known as the international symbol of access.



Such symbol shall be white on a blue background and shall indicate the location of facilities designed for the physically disabled or elderly. When a building contains an entrance other than the main entrance which is ramped or level for use by physically disabled or elderly persons, a sign with the symbol showing its location shall be posted at or near the main entrance which shall be visible from the adjacent public sidewalk or way. [1975 1st ex.s. c 110 § 3.]

70.92.130 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Administrative authority" means the building department of each county, city, or town of this state;

(2) "Substantially remodeled or substantially rehabilitated" means any alteration or restoration of a building or structure within any twelve-month period, the cost of which exceeds sixty percent of the currently appraised value of the particular building or structure;

(3) "Council" means the state building code advisory council. [1975 1st ex.s. c 110 § 4.]

70.92.140 Minimum standards for facilities—Adoption—Facilities to be included. The state building code advisory council shall adopt minimum standards by

rule and regulation for the provision of facilities in buildings and structures to accommodate the elderly, as well as physically disabled persons, which shall include but not be limited to standards for:

- (1) Ramps;
- (2) Doors and doorways;
- (3) Stairs;
- (4) Floors;
- (5) Entrances;
- (6) Toilet rooms and paraphernalia therein;
- (7) Water fountains;
- (8) Public telephones;
- (9) Elevators;
- (10) Switches and levers for the control of light, ventilation, windows, mirrors, etc.;
- (11) Plaques identifying such facilities;
- (12) Turnstiles and revolving doors;
- (13) Kitchen facilities, where appropriate;
- (14) Grading of approaches to entrances;
- (15) Parking facilities;
- (16) Seating facilities, where appropriate, in buildings where people normally assemble. [1975 1st ex.s. c 110 § 5.]

70.92.150 Standards adopted by other states to be considered—Majority vote. The council in adopting these minimum standards shall consider minimum standards adopted by both law and rule and regulation in other states: *Provided*, That no standards adopted by the council pursuant to RCW 70.92.100 through 70.92.160 shall take effect until July 1, 1976. The council shall adopt such standards by majority vote pursuant to the provisions of chapter 34.04 RCW. [1975 1st ex.s. c 110 § 6.]

70.92.160 Waiver from compliance with standards. The administrative authority of any jurisdiction may grant a waiver from compliance with any standard adopted hereunder for a particular building or structure if it determines that compliance with the particular standard is impractical: *Provided*, That such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: *Provided further*, That the board of appeals provided for in section 204 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein. [1975 1st ex.s. c 110 § 7.]

Chapter 70.93

MODEL LITTER CONTROL AND RECYCLING ACT

Sections

- 70.93.010 Legislative findings.
- 70.93.020 Declaration of purpose.
- 70.93.030 Definitions.

- 70.93.040 Administrative procedure act—Application to chapter.
- 70.93.050 Enforcement of chapter.
- 70.93.060 Littering prohibited—Penalties.
- 70.93.070 Collection of fines and forfeitures.
- 70.93.080 Notice to public—Contents of chapter—Required.
- 70.93.090 Litter receptacles—Use of anti-litter symbol—Distribution—Placement—Grants to small cities—Violations—Penalties.
- 70.93.100 Litter bags—Design and distribution by department authorized—Violations—Penalties (as amended by 1979 c 94).
- 70.93.100 Litter bags—Design and distribution by department authorized—Violations—Penalties (as amended by 1979 c 158).
- 70.93.110 Removal of litter—Responsibility.
- 70.93.120 Litter assessment—Imposed—Amount—Collection.
- 70.93.130 Litter assessment—Application to certain products.
- 70.93.140 Litter assessment—Powers and duties of department of revenue—Guidelines.
- 70.93.150 "Sold within this state"—"Sales of the business within this state"—Defined.
- 70.93.160 Application of chapters 82.04 and 82.32 RCW to chapter—Exceptions.
- 70.93.170 Litter assessment—Exemptions.
- 70.93.180 Litter control account—Creation—Composition.
- 70.93.194 Litter control account—Distribution of funds.
- 70.93.200 Department of ecology—Administration of anti-litter and recycling programs—Guidelines.
- 70.93.210 Anti-litter and recycling campaign—Industrial cooperation requested.
- 70.93.230 Violations of chapter—Penalties.
- 70.93.900 Severability—1971 ex.s. c 307.
- 70.93.910 Alternative to Initiative 40—Placement on ballot—Force and effect of chapter.
- 70.93.920 Severability—1979 c 94.

Reviser's note: Throughout chapter 70.93 RCW, the term "this 1971 amendatory act" has been changed to "this chapter"; "this 1971 amendatory act" [1971 ex.s. c 307] consists of this chapter, the 1971 amendment to RCW 46.61.655 and the repeal of RCW 9.61.120, 9.66.060, 9.66.070 and 46.61.650.

Solid waste management, recovery and recycling: Chapter 70.95 RCW.

70.93.010 Legislative findings. Recognizing the rapid population growth of the state of Washington and the ever increasing mobility of its people, as well as the fundamental need for a healthful, clean and beautiful environment; and further recognizing that the proliferation and accumulation of litter discarded throughout this state impairs this need and constitutes a public health hazard; and further recognizing the need to conserve energy and natural resources; and further recognizing that there is an imperative need to anticipate, plan for, and accomplish effective litter control and recover and recycle waste materials related to litter with the subsequent conservation of resources and energy, there is hereby enacted this "Model Litter Control and Recycling Act". [1979 c 94 § 1; 1971 ex.s. c 307 § 1.]

70.93.020 Declaration of purpose. The purpose of this chapter is to accomplish litter control and stimulate private recycling programs throughout this state by delegating to the department of ecology the authority to: (1) Conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible; (2) recover and recycle waste materials related to litter and littering; (3) foster private recycling; and (4) increase public awareness of

the need for recycling and litter control. It is further the intent and purpose of this chapter to create jobs for employment of youth in litter cleanup and related activities and to stimulate and encourage small, private recycling centers. This program shall include the compatible goal of recovery of recyclable materials to conserve energy and natural resources wherever practicable. Every other department of state government and all local governmental units and agencies of this state shall cooperate with the department of ecology in the administration and enforcement of this chapter. The intent of this chapter is to add to and to coordinate existing recycling and litter control and removal efforts and not terminate or supplant such efforts. [1979 c 94 § 2; 1975-'76 2nd ex.s. c 41 § 7; 1971 ex.s. c 307 § 2.]

Severability—1975-'76 2nd ex.s. c 41: See RCW 70.95.911.

Solid waste disposal, recovery and recycling: Chapter 70.95 RCW.

70.93.030 Definitions. As used in this chapter unless the context indicates otherwise:

- (1) "Department" means the department of ecology;
- (2) "Director" means the director of the department of ecology;
- (3) "Disposable package or container" means all packages or containers defined as such by rules and regulations adopted by the department of ecology;
- (4) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing;
- (5) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity;
- (6) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter;
- (7) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever;
- (8) "Recycling" means the process of separating, cleansing, treating, and reconstituting used or discarded litter-related materials for the purpose of recovering and reusing the resources contained therein;
- (9) "Recycling center" means a central collection point for recyclable materials;
- (10) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks;
- (11) "Watercraft" means any boat, ship, vessel, barge, or other floating craft;

(12) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests. [1979 c 94 § 3; 1971 ex.s. c 307 § 3.]

70.93.040 Administrative procedure act—Application to chapter. In addition to his other powers and duties, the director shall have the power to propose and to adopt pursuant to chapter 34.04 RCW rules and regulations necessary to carry out the provisions, purposes, and intent of this chapter. [1971 ex.s. c 307 § 4.]

70.93.050 Enforcement of chapter. The director shall designate trained employees of the department to be vested with police powers to enforce and administer the provisions of this chapter and all rules and regulations adopted thereunder. The director shall also have authority to contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of this chapter. In addition, state patrol officers, game protectors and deputy game protectors, fire wardens, deputy fire wardens and forest rangers, sheriffs and marshals and their deputies, and police officers, and those employees of the department of ecology and the parks and recreation commission vested with police powers all shall enforce the provisions of this chapter and all rules and regulations adopted thereunder and are hereby empowered to issue citations to and/or arrest without warrant, persons violating any provision of this chapter or any of the rules and regulations adopted hereunder. All of the foregoing enforcement officers may serve and execute all warrants, citations, and other process issued by the courts in enforcing the provisions of this chapter and rules and regulations adopted hereunder. In addition, mailing by registered mail of such warrant, citation, or other process to his last known place of residence shall be deemed as personal service upon the person charged. [1979 c 94 § 4; 1971 ex.s. c 307 § 5.]

70.93.060 Littering prohibited—Penalties. No person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

- (1) When such property is designated by the state or by any of its agencies or political subdivisions for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose;
- (2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of said private or public property or waters.

Any person violating the provisions of this section shall be guilty of a misdemeanor and the fine for such violation shall not be less than ten dollars for each offense. In addition thereto, except where infirmity or age

or other circumstance would create a hardship, such person shall be directed by the court in which conviction is obtained to pick up and remove litter from public property and/or private property, with prior permission of the legal owner, for not less than eight hours nor more than sixteen hours for each separate offense. The court shall schedule the time to be spent on such activities in such a manner that it does not interfere with the person's employment and does not interfere substantially with the person's family responsibilities. [1979 1st ex.s. c 39 § 1; 1971 ex.s. c 307 § 6.]

70.93.070 Collection of fines and forfeitures. The director shall prescribe the procedures for the collection of fines and bail forfeitures including the imposition of additional penalty charges for late payment of fines. [1971 ex.s. c 307 § 7.]

70.93.080 Notice to public—Contents of chapter—Required. Pertinent portions of this chapter shall be posted along the public highways of this state and in all campgrounds and trailer parks, at all entrances to state parks, forest lands, and recreational areas, at all public beaches, and at other public places in this state where persons are likely to be informed of the existence and content of this chapter and the penalties for violating its provisions. [1971 ex.s. c 307 § 8.]

70.93.090 Litter receptacles—Use of anti-litter symbol—Distribution—Placement—Grants to small cities—Violations—Penalties. The department shall design and the director shall adopt by rule or regulation one or more types of litter receptacles which are reasonably uniform as to size, shape, capacity and color, for wide and extensive distribution throughout the public places of this state. Each such litter receptacle shall bear an anti-litter symbol as designed and adopted by the department. In addition, all litter receptacles shall be designed to attract attention and to encourage the depositing of litter.

Litter receptacles of the uniform design shall be placed along the public highways of this state and at all parks, campgrounds, trailer parks, drive-in restaurants, gasoline service stations, tavern parking lots, shopping centers, grocery store parking lots, parking lots of major industrial firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches and bathing areas, and such other public places within this state as specified by rule or regulation of the director adopted pursuant to chapter 34.04 RCW. The number of such receptacles required to be placed as specified herein shall be determined by a formula related to the need for such receptacles.

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles of the uniform design are required by this section to procure and place such receptacles at their own expense on the premises in accord with rules and regulations adopted by the department.

The department shall establish a system of grants to aid cities, towns, and counties with populations under

twenty-five thousand in procuring and placing such litter receptacles. Such grants shall be on a matching basis under which the local government involved electing to participate in this program shall be required to pay at least fifty percent of the total costs of procurement of receptacles sufficient in number to meet departmental guidelines established by rule pursuant to this section. The amount of the grant shall be determined on a case-by-case basis by the director after consideration of need, available departmental and local government funds, degree of prior compliance by the local government involved in placement of receptacles, and other relevant criteria. The responsibility for maintaining and emptying such receptacles shall remain with the unit of local government.

Any person, other than a political subdivision, government agency, or municipality, who fails to place such litter receptacles on the premises in the numbers required by rule or regulation of the department, violating the provisions of this section or rules or regulations adopted thereunder shall be subject to a fine of ten dollars for each day of violation. [1979 c 94 § 5; 1971 ex.s. c 307 § 9.]

70.93.100 Litter bags—Design and distribution by department authorized—Violations—Penalties (as amended by 1979 c 94). The department shall design and produce a litter bag bearing the state-wide anti-litter symbol and a statement of the penalties prescribed herein for littering in this state. As soon as possible after March 23, 1979, such litter bags shall be distributed by the *department of motor vehicles at no charge to the owner of every licensed vehicle in this state at the time and place of license renewal. The department of ecology shall make such litter bags available to the owners of water craft in this state and shall also provide such litter bags at no charge at points of entry into this state and at visitor centers to the operators of incoming vehicles and watercraft. The owner of any vehicle or watercraft who fails to keep and use a litter bag in his vehicle or watercraft shall be guilty of a violation of this section and shall be subject to a fine as provided in this chapter. [1979 c 94 § 6; 1971 ex.s. c 307 § 10.]

*Reviser's note: The *department of motor vehicles* redesignated the *department of licensing* by 1977 ex.s. c 334. See RCW 46.01.020.

70.93.100 Litter bags—Design and distribution by department authorized—Violations—Penalties (as amended by 1979 c 158). The department may design and produce a litter bag bearing the state-wide anti-litter symbol and a statement of the penalties prescribed herein for littering in this state. Such litter bags may be distributed by the department of licensing at no charge to the owner of every licensed vehicle in this state at the time and place of license renewal. The department of ecology may make such litter bags available to the owners of water craft in this state and may also provide such litter bags at no charge at points of entry into this state and at visitor centers to the operators of incoming vehicles and watercraft. The owner of any vehicle or watercraft who fails to keep and use a litter bag in his vehicle or watercraft shall be guilty of a violation of this section and shall be subject to a fine as provided in this chapter. [1979 c 158 § 219; 1971 ex.s. c 307 § 10.]

Reviser's note: RCW 70.93.100 was amended twice during the 1979 regular session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same legislative session, see RCW 1.12.025.

70.93.110 Removal of litter—Responsibility. Responsibility for the removal of litter from receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies performing litter removal. Removal of

litter from litter receptacles placed on private property which is used by the public shall remain the responsibility of the owner of such private property. [1971 ex.s. c 307 § 11.]

70.93.120 Litter assessment—Imposed—Amount—Collection. There is hereby levied and there shall be collected by the department of revenue from every person engaging within this state in business as a manufacturer and/or making sales at wholesale and/or making sales at retail, an annual litter assessment equal to the value of products manufactured and sold within this state, including by-products, multiplied by one and one-half hundredths of one percent in the case of manufacturers, and equal to the gross proceeds of the sales of the business within this state multiplied by one and one-half hundredths of one percent in the case of sales at wholesale and/or at retail. [1971 ex.s. c 307 § 12.]

70.93.130 Litter assessment—Application to certain products. Because it is the express purpose of this chapter to accomplish effective litter control within the state of Washington and because it is a further purpose of this chapter to allocate a portion of the cost of administering it to those industries whose products including the packages, wrappings, and containers thereof, are reasonably related to the litter problem, in arriving at the amount upon which the assessment is to be calculated only the value of products or the gross proceeds of sales of products falling into the following categories shall be included:

- (1) Food for human or pet consumption.
- (2) Groceries.
- (3) Cigarettes and tobacco products.
- (4) Soft drinks and carbonated waters.
- (5) Beer and other malt beverages.
- (6) Wine.
- (7) Newspapers and magazines.
- (8) Household paper and paper products.
- (9) Glass containers.
- (10) Metal containers.
- (11) Plastic or fiber containers made of synthetic material.
- (12) Cleaning agents and toiletries.
- (13) Nondrug drugstore sundry products. [1971 ex.s. c 307 § 13.]

70.93.140 Litter assessment—Powers and duties of department of revenue—Guidelines. The department of revenue by rule and regulation made pursuant to chapter 34.04 RCW may, if such is required, define the categories (1) through (13) as set forth in RCW 70.93-.130. In making any such definitions, the department of revenue shall be guided by the following standards:

- (1) It is the purpose of this chapter to accomplish effective control of litter within this state;
- (2) It is the purpose of this chapter to allocate a portion of the cost of administration of this chapter to those industries manufacturing and/or selling products and the packages, wrappings, or containers thereof which are reasonably related to the litter problem within this state. [1971 ex.s. c 307 § 14.]

70.93.150 "Sold within this state"—"Sales of the business within this state"—Defined. "Sold within this state" or "sales of the business within this state" as used in RCW 70.93.120 shall mean all sales of retailers engaged in business within this state and all sales of products for use or consumption within this state in the case of manufacturers and wholesalers. [1971 ex.s. c 307 § 15.]

70.93.160 Application of chapters 82.04 and 82.32 RCW to chapter—Exceptions. All of the provisions of chapters 82.04 and 82.32 RCW such as they apply are incorporated herein except RCW 82.04.220 through 82-.04.290, and 82.04.330. [1971 ex.s. c 307 § 16.]

70.93.170 Litter assessment—Exemptions. The litter assessment herein provided for shall not be applied to the value of products or gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of such animal, bird, or insect. In all other instances, the assessment shall be applied. [1971 ex.s. c 307 § 17.]

70.93.180 Litter control account—Creation—Composition. There is hereby created an account within the general fund to be known as the "litter control account". All assessments, fines, bail forfeitures, and other funds collected or received pursuant to this chapter shall be deposited in the litter control account and used for the administration and implementation of this chapter. [1971 ex.s. c 307 § 18.]

70.93.194 Litter control account—Distribution of funds. The department shall allocate and distribute funds annually from the litter control account as follows:

- (1) Not less than forty percent nor more than fifty percent for a litter patrol program to employ youth from the state to remove litter from places and areas that are most visible to the public;
- (2) Not less than twenty percent nor more than thirty percent to accomplish the litter control purposes of this chapter other than as specified in subsection (1) of this section. A substantial part of this portion shall be used for public education and awareness programs to control litter and to promote awareness of the Model Litter Control and Recycling Act; and
- (3) Not less than twenty percent nor more than thirty percent to accomplish the recycling purposes of this chapter. A substantial part of this portion shall be used for public education and awareness programs to foster private local recycling efforts and to promote awareness of the Model Litter Control and Recycling Act. [1979 c 94 § 9.]

70.93.200 Department of ecology—Administration of anti-litter and recycling programs—Guidelines. In addition to the foregoing, the department of ecology shall:

- (1) Serve as the coordinating agency between the various industry organizations seeking to aid in the anti-litter and recycling efforts;

(2) Recommend to the governing bodies of all local governments that they adopt ordinances similar to the provisions of this chapter;

(3) Cooperate with all local governments to accomplish coordination of local anti-litter and recycling efforts;

(4) Encourage, organize, and coordinate all voluntary local anti-litter and recycling campaigns seeking to focus the attention of the public on the programs of this state to control and remove litter and to foster recycling;

(5) Investigate the availability of, and apply for funds available from any private or public source to be used in the program outlined in this chapter;

(6) Develop state-wide programs to increase public awareness of and participation in recycling and to stimulate and encourage local private recycling centers, public participation in recycling and research and development in the field of litter control, and recycling, removal, and disposal of litter-related recycling materials. [1979 c 94 § 7; 1971 ex.s. c 307 § 20.]

70.93.210 Anti-litter and recycling campaign—Industrial cooperation requested. To aid in the state-wide anti-litter and recycling campaign, the state legislature requests that the various industry organizations which are active in anti-litter and recycling efforts provide active cooperation with the department of ecology so that additional effect may be given to the anti-litter and recycling campaign of the state of Washington. [1979 c 94 § 8; 1971 ex.s. c 307 § 21.]

70.93.230 Violations of chapter—Penalties. Every person convicted of a violation of this chapter for which no penalty is specially provided for shall be punished by a fine of not more than ten dollars for each such violation. [1971 ex.s. c 307 § 23.]

70.93.900 Severability—1971 ex.s. c 307. If any provision of this 1971 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1971 ex.s. c 307 § 25.]

70.93.910 Alternative to Initiative 40—Placement on ballot—Force and effect of chapter. This 1971 amendatory act constitutes an alternative to Initiative 40. The secretary of state is directed to place this 1971 amendatory act on the ballot in conjunction with Initiative 40 at the next general election.

This 1971 amendatory act shall continue in force and effect until the secretary of state certifies the election results on this 1971 amendatory act. If affirmatively approved at the general election, this 1971 amendatory act shall continue in effect thereafter. [1971 ex.s. c 307 § 27.]

Reviser's note: Chapter 70.93 RCW [1971 ex.s. c 307] was approved and validated at the November 7, 1972 general election as Alternative Measure 40B.

70.93.920 Severability—1979 c 94. If any provision of this 1979 act or its application to any person or

circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 94 § 11.]

Chapter 70.94

WASHINGTON CLEAN AIR ACT

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			<i>Transfer of powers, duties, and functions with respect to air pollution under chapter 70.94 RCW to department of ecology: RCW 43.21A.060.</i>

70.94.011 Declaration of public policies and purpose—Division of state into two major areas. It is declared to be the public policy of the state to secure and maintain such levels of air quality as will protect human health and safety and comply with the requirements of the federal clean air act, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the state, and facilitate the enjoyment of the natural attractions of the state. The problems and effects of air pollution are frequently regional and interjurisdictional in nature, and are dependent upon the existence of urbanization and industrialization in areas having common topography and recurring weather conditions conducive to the buildup of air contaminants.

It is also declared as public policy that regional air pollution control programs are to be encouraged and supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

It is also declared to be the public policy of the state to provide for the people of the populous metropolitan regions in the state the means of obtaining air pollution control not adequately provided by existing agencies of local government. For reasons of the present and potential dramatic growth in population, urbanization, and

industrialization, the special problem of air resource management, encompassing both corrective and preventive measures for the control of air pollution cannot be adequately met by the individual towns, cities, and counties of many metropolitan regions.

In addition, the state is divided into two major areas, each having unique characteristics as to natural climatic and topographic features which may result in the different potentials for the accumulation and buildup of air contaminant concentrations. These two major areas are the area lying west of the Cascade Mountain crest and the area lying east of the Cascade Mountain crest. Within each of these major areas are regions which, because of the climate and topography and present and potential urbanization and industrial development may, through definitive evaluation be classed as regional air pollution areas.

To these ends it is the purpose of this chapter to provide for a coordinated state-wide program of air pollution prevention and control, for an appropriate distribution of responsibilities between the state, regional, and local units of government, and for cooperation across jurisdictional lines in dealing with problems of air pollution. [1973 1st ex.s. c 193 § 1; 1969 ex.s. c 168 § 1; 1967 c 238 § 1.]

70.94.025 Pollution control hearings board of the state of Washington as affecting chapter 70.94 RCW. See chapter 43.21B RCW.

70.94.030 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property.

(3) "Person" means and includes an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency.

(4) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(5) "Board" means the board of directors of an authority.

(6) "Control officer" means the air pollution control officer of any authority.

(7) "State board" means the state air pollution control board, or any department or agency which by law shall succeed to its powers, duties and functions.

(8) "Emission" means a release into the outdoor atmosphere of air contaminants.

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

(10) "Ambient air" means the surrounding outside air.

(11) "Multicounty authority" means an authority which consists of two or more counties.

(12) "Emission standard" means a limitation on the release of a contaminant or multiple contaminants into the ambient air.

(13) "Air quality standard" means an established concentration, exposure time and frequency of occurrence of a contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(14) "Air quality objective" means the concentration and exposure time of a contaminant or multiple contaminants in the ambient air below which undesirable effects will not occur. [1979 c 141 § 119; 1969 ex.s. c 168 § 2; 1967 ex.s. c 61 § 1; 1967 c 238 § 2; 1957 c 232 § 3.]

70.94.040 Causing or permitting air pollution unlawful—Exception. Except where specified in a variance permit, as provided in RCW 70.94.181, it shall be unlawful for any person knowingly to cause air pollution or knowingly permit it to be caused in violation of this chapter, or of any ordinance, resolution, rule or regulation validly promulgated hereunder. [1967 c 238 § 3; 1957 c 232 § 4.]

70.94.041 Exception—Burning wood at historic structure. Except as otherwise provided in this section, any building or structure listed on the national register of historic sites, structures, or buildings established pursuant to 80 Stat. 915, 16 U.S.C. Sec. 470a, or on the state register established pursuant to *RCW 43.51.770, shall be permitted to burn wood as it would have when it was a functioning facility as an authorized exception to the provisions of this chapter. Such burning of wood shall not be exempted from the provisions of RCW 70.94.710 through 70.94.730. [1977 ex.s. c 38 § 1.]

*Reviser's note: RCW 43.51.770 was repealed by 1977 ex.s. c 195 § 22.

70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations—Reports to legislature. (1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) All authorities which are presently or may hereafter be within counties of the first class, class A or class AA, are hereby designated as activated authorities and shall carry out the duties and exercise the powers provided in this chapter. Those authorities hereby activated which encompass contiguous counties located in one or the other of the two major areas determined in RCW 70.94.011 are declared to be and directed to function as a multicounty authority.

(3) Except as provided in RCW 70.94.232, all other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such appointees and/or county commissioners as is provided in RCW 70.94.100. The first meeting of the boards of those authorities designated as activated authorities by this chapter shall be on or before sixty days after June 8, 1967.

(5) The state board and the department of social and health services are directed to conduct the necessary evaluations and delineate appropriate air pollution regions throughout the state, taking into consideration:

(a) The natural climatic and topographic features affecting the potential for buildup of air contaminant concentrations.

(b) The degree of urbanization and industrialization and the existence of activities which are likely to cause air pollution.

(c) The county boundaries as related to the air pollution regions and the practicality of administering air pollution control programs.

The state board and the department are directed to report to the 1969 and succeeding legislative sessions with respect to the further need for activating or combining air pollution control authorities. [1979 c 141 § 120; 1967 c 238 § 4.]

70.94.055 Air pollution control authority may be activated by certain counties, when. The board of county commissioners of any county other than a first class, class A or class AA county may activate an air pollution control authority following a public hearing on its own motion, or upon a filing of a petition signed by one hundred property owners within the county. If the board of county commissioners determines as a result of the public hearing that:

(1) Air pollution exists or is likely to occur; and

(2) The city or town ordinances or county resolutions, or their enforcement, are inadequate to prevent or control air pollution, they shall by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority. [1967 c 238 § 5.]

70.94.057 Multicounty authority may be formed by contiguous counties—Name. The boards of county commissioners of two or more contiguous counties may, by joint resolution, combine to form a multicounty air pollution control authority. Boundaries of such authority shall be coextensive with the boundaries of the counties forming the authority.

The name of the multicounty authority shall bear the names of the counties making up such multicounty authority or a name adopted by the board of such multicounty authority. [1967 c 238 § 6.]

70.94.068 Merger of active and inactive authorities to form multicounty or regional authority—Procedure. The respective boards of county commissioners of two or more contiguous counties may merge any combination of their several inactive or activated authorities to form one activated multicounty authority. Upon a determination that the purposes of this chapter will be served by such

merger, each board of county commissioners may adopt the resolution providing for such merger. Such resolution shall become effective only when a similar resolution is adopted by the other contiguous county or counties comprising the proposed authority. The boundaries of such authority shall be coextensive with the boundaries of the counties within which it is located. [1969 ex.s. c 168 § 3; 1967 c 238 § 11.]

70.94.069 Merger of active and inactive authorities to form multicounty or regional authority—Reorganization of board of directors—Rules and regulations. Whenever there occurs a merger of an inactive authority with an activated authority or authorities, or of two activated authorities to form a multicounty authority, the board of directors shall be reorganized as provided in RCW 70.94.100, 70.94.110, and 70.94.120.

In the case of the merger of two or more activated authorities the rules and regulations of each authority shall continue in effect and shall be enforced within the jurisdiction of each until such time as the board of directors adopts rules and regulations applicable to the newly formed multicounty authority.

In the case of the merger of an inactive authority with an activated authority or authorities, upon approval of such merger by the board or boards of county commissioners of the county or counties comprising the existing activated authority or authorities, the rules and regulations of the activated authority or authorities shall remain in effect until superseded by the rules and regulations of the multicounty authority as provided in RCW 70.94.230. [1969 ex.s. c 168 § 4; 1967 c 238 § 12.]

70.94.070 Resolutions activating authorities—Contents—Filings—Effective date of operation. The resolution or resolutions activating an air pollution authority shall specify the name of the authority and participating political bodies; the authority's principal place of business; the territory included within it; and the effective date upon which such authority shall begin to transact business and exercise its powers. In addition, such resolution or resolutions may specify the amount of money to be contributed annually by each political subdivision, or a method of dividing expenses of the air pollution control program. Upon the adoption of a resolution or resolutions calling for the activation of an authority or the merger of an inactive or activated authority or several activated authorities to form a multicounty authority, the governing body of each shall cause a certified copy of each such ordinance or resolution to be filed in the office of the secretary of state of the state of Washington. From and after the date of filing with the secretary of state a certified copy of each such resolution, or resolutions, or the date specified in such resolution or resolutions, whichever is later, the authority may begin to function and may exercise its powers.

Any authority activated by the provisions of this chapter shall cause a certified copy of all information required by this section to be filed in the office of the secretary of state of the state of Washington. [1969 ex.s. c 168 § 5; 1967 c 238 § 13; 1957 c 232 § 7.]

70.94.081 Powers and duties of authorities. An activated authority shall be deemed a municipal corporation; have right to perpetual succession; adopt and use a seal; may sue and be sued in the name of the authority in all courts and in all proceedings; and, may receive, account for, and disburse funds, employ personnel, and acquire or dispose of any interest in real or personal property within or without the authority in the furtherance of its purposes. [1969 ex.s. c 168 § 6; 1967 c 238 § 14.]

70.94.091 Excess tax levy authorized—Election, procedure, expense. An activated authority shall have the power to levy additional taxes in excess of the constitutional and/or statutory tax limitations for any of the authorized purposes of such activated authority, not in excess of twenty-five cents per thousand dollars of assessed value a year when authorized so to do by the electors of such authority by a three-fifths majority of those voting on the proposition at a special election, to be held in the year in which the levy is made, in the manner set forth in Article VII, section 2 (a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. Nothing herein shall be construed to prevent holding the foregoing special election at the same time as that fixed for a general election. The expense of all special elections held pursuant to this section shall be paid by the authority. [1973 1st ex.s. c 195 § 84; 1969 ex.s. c 168 § 7; 1967 c 238 § 15.]

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

70.94.092 Fiscal year—Adoption of budget—Contents—"Supplemental income"—Emergency expenditures. Notwithstanding the provisions of RCW 1.16.030, the budget year of each activated authority shall be the fiscal year beginning July 1st and ending on the following June 30th. The current budget year shall be terminated June 30, 1975, and a budget for the fiscal year beginning July 1, 1975, shall be adopted pursuant to this section as now or hereafter amended. On or before the fourth Monday in June of each year, each activated authority shall adopt a budget for the following fiscal year. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The remaining funds required to meet budget expenditures, if any, shall be designated as "supplemental income" and shall be obtained from the component cities, towns, and counties in the manner provided in this chapter. The affirmative vote of three-fourths of all members of the board shall be required to authorize emergency expenditures. [1975 1st ex.s. c 106 § 1; 1969 ex.s. c 168 § 8; 1967 c 238 § 16.]

70.94.093 Methods for determining proportion of supplemental income to be paid by component cities, towns and counties—Payment. (1) Each component city or town shall pay such proportion of the supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as provided in subsection (1)(c) of this section:

(a) Each component city or town shall pay such proportion of the supplemental income as the assessed valuation of property within its limits bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component city or town shall pay such proportion of the supplemental income as the total population of such city or town bears to the total population of the activated authority. The population of the city or town shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: *Provided*, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(2) Each component county shall pay such proportion of such supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as prescribed in subsection (2)(c) of this section:

(a) Each component county shall pay such proportion of such supplemental income as the assessed valuation of the property within the unincorporated area of such county lying within the activated authority bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component county shall pay such proportion of the supplemental income as the total population of the unincorporated area of such county bears to the total population of the activated authority. The population of the county shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: *Provided*, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(3) In making such determination of the assessed valuation of property in the component cities, towns and counties, the board shall use the last available assessed valuations. The board shall certify to each component city, town and county, prior to the fourth Monday in June of each year, the share of the supplemental income to be paid by such component city, town or county for the next calendar year. The latter shall then include such amount in its budget for the ensuing calendar year, and during such year shall pay to the activated authority, in equal quarterly installments, the amount of its supplemental share. [1969 ex.s. c 168 § 9; 1967 c 238 § 17.]

70.94.094 Designation of authority treasurer and auditor—Duties. The treasurer of each component city, town or county shall create a separate fund into which shall be paid all money collected from taxes or from any

other available sources, levied by or obtained for the activated authority on property or on any other available sources in such city, town or county and such money shall be forwarded quarterly by the treasurer of each such city, town or county to the treasurer of the county designated by the board as the authority treasurer. The treasurer of the county so designated to serve as treasurer of the authority shall establish and maintain such funds as may be authorized by the board. Money shall be disbursed from such funds upon warrants drawn by the auditor of the county designated by the board as the authority auditor as authorized by the board. The respective county shall be reimbursed by the board for services rendered by the treasurer and auditor of the respective county in connection with the receipt and disbursement of such funds. [1969 ex.s. c 168 § 10; 1967 c 238 § 18.]

70.94.095 Assessed valuation of taxable property, certification by county assessors. It shall be the duty of the assessor of each component county to certify annually to the board the aggregate assessed valuation of all taxable property in all incorporated and unincorporated areas situated in any activated authority as the same appears from the last assessment roll of his county. [1969 ex.s. c 168 § 11; 1967 c 238 § 19.]

70.94.096 Authorization to borrow money. An activated authority shall have the power when authorized by a majority of all members of the board to borrow money from any component city, town or county and such cities, towns and counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the board and the legislative bodies of any such component city, town or county to provide funds to carry out the purposes of the activated authority. [1969 ex.s. c 168 § 12; 1967 c 238 § 20.]

70.94.097 Special air pollution studies—Contracts for conduct of. In addition to paying its share of the supplemental income of the activated authority, each component city, town, or county shall have the power to contract with such authority and expend funds for the conduct of special studies, investigations, plans, research, advice, or consultation relating to air pollution and its causes, effects, prevention, abatement, and control as such may affect any area within the boundaries of the component city, town, or county, and which could not be performed by the authority with funds otherwise available to it. Any component city, town or county which contracts for the conduct of such special air pollution studies, investigations, plans, research, advice or consultation with any entity other than the activated authority shall require that such an entity consult with the activated authority. [1975 1st ex.s. c 106 § 2.]

70.94.100 Board of directors of authority—Composition—Term. (1) The governing body of each authority shall be known as the board of directors.

(2) In the case of an authority comprised of one county the board shall be comprised of two appointees of the city selection committee as hereinafter provided, at

least one of whom shall represent the city having the most population in the county, and two county commissioners to be designated by the board of county commissioners. In the case of an authority comprised of two or three counties, the board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided, who shall represent the city having the most population in such county, and one county commissioner from each county to be designated by the board of county commissioners of each county making up the authority. In the case of an authority comprised of four or five counties, the board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided who shall represent the city having the most population in such county, and one county commissioner from each county to be designated by the board of county commissioners of each county making up the authority. In the case of an authority comprised of six or more counties, the board shall be comprised of one county commissioner from each county to be designated by the board of county commissioners of each county making up the authority, and one appointee from each city with over one hundred thousand population to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority. All board members shall hold office at the pleasure of the appointing body. [1969 ex.s. c 168 § 13; 1967 c 238 § 21; 1957 c 232 § 10.]

70.94.110 City selection committees. There shall be a separate and distinct city selection committee for each county making up an authority. The membership of such committee shall consist of the mayor of each incorporated city and town within such county. A majority of the members of each city selection committee shall constitute a quorum. [1967 c 238 § 22; 1963 c 27 § 1; 1957 c 232 § 11.]

70.94.120 City selection committees—Meetings, notice—Recording officer. The city selection committee of each county which is included within an authority shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice given by the county auditor to each member of the city selection committee of each county and he shall give such notice upon request of any member of such committee. A similar notice shall be given to the general public by a publication of such notice in a newspaper of general circulation in such authority. The county auditor shall act as recording officer, maintain its records and give appropriate notice of its proceedings and actions. [1969 ex.s. c 168 § 14; 1967 c 238 § 23; 1957 c 232 § 12.]

70.94.130 Board of directors—Powers, quorum, officers, compensation. The board shall exercise all powers of the authority except as otherwise provided. The board shall conduct its first meeting within thirty days after all of its members have been appointed or designated as provided in RCW 70.94.100. A majority of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chairman and such other officers as may be necessary. Any member of the board may designate a regular alternate to serve on the board in his place with the same authority as the member when he is unable to attend. Each member of the board, or his representative, shall receive from the authority twenty-five dollars per day compensation (but not to exceed one thousand dollars per year) for each full day spent in the performance of his duties under this chapter, plus the actual and necessary expenses incurred by him in such performance. The board may appoint an executive director, and any other personnel, and shall determine their salaries, and pay same, together with any other proper indebtedness, from authority funds. [1969 ex.s. c 168 § 15; 1967 c 238 § 24; 1957 c 232 § 13.]

70.94.141 Powers and duties of city, town, county or board of activated authority. The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own ordinances, resolutions, or rules and regulations, as the case may be, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with chapter 42.32 RCW.

(2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

(8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of this chapter. [1970 ex.s. c 62 § 56; 1969 ex.s. c 168 § 16; 1967 c 238 § 25.]

Reviser's note: (1) RCW 42.32.010 and 42.32.020 were repealed by 1971 ex.s. c 250 § 15; later enactment see chapter 42.30 RCW.

(2) "chapter 62, Laws of 1970 ex. sess.", see notes following RCW 43.21A.010.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.142 Subpoena powers—Witnesses, expenses and mileage—Rules and regulations. In connection with the subpoena powers given in RCW 70.94.141(2):

(1) In any hearing held under RCW 70.94.181, 70.94.221 and 70.94.333, the board or the state board, and their authorized agents:

(a) shall issue a subpoena upon the request of any party and, to the extent required by rule or regulation, upon a statement or showing of general relevance and reasonable scope of the evidence sought;

(b) may issue a subpoena upon their own motion.

(2) The subpoena powers given in RCW 70.94.141(2) shall be state-wide in effect.

(3) Witnesses appearing under the compulsion of a subpoena in a hearing before the board or the state board shall be paid the same fees and mileage that are provided for witnesses in the courts of this state. Such fees and mileage, and the cost of duplicating records required to be produced by subpoena issued upon the motion of the board or state board, shall be paid by the board or state board. Such fees and mileage, and the cost of producing records required to be produced by subpoena issued upon the request of a party, shall be paid by that party.

(4) If an individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, the board or state board shall file its written report thereof and proof of service of its subpoena, in any court of competent jurisdiction in the county where the examination, hearing or

investigation is being conducted. Thereupon, the court shall forthwith cause the individual to be brought before it and, upon being satisfied that the subpoena is within the jurisdiction of the board or state board and otherwise in accordance with law, shall punish him as if the failure or refusal related to a subpoena from or testimony in that court.

(5) The state board may make such rules and regulations as to the issuance of its own subpoenas as are not inconsistent with the provisions of this chapter. [1969 ex.s. c 168 § 17; 1967 c 238 § 26.]

70.94.143 Federal aid. Any authority exercising the powers and duties prescribed in this chapter may make application for, receive, administer, and expend any federal aid, under federal legislation from any agency of the federal government, for the prevention and control of air pollution or the development and administration of programs related to air pollution control and prevention, as permitted by RCW 70.94.141(12): *Provided*, That any such application shall be submitted to and approved by the state board. The state board shall adopt rules and regulations establishing standards for such approval and shall approve any such application, if it is consistent with this chapter, and any other applicable requirements of law. [1969 ex.s. c 168 § 18; 1967 c 238 § 27.]

70.94.151 Classification of air contaminant sources—Registration—Fee, when. (1) The board of any activated authority or the state board, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the state board or board of the authority, require registration and reporting shall register therewith and make reports containing information as may be required by such state board or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. The state board or board may require that such registration be accompanied by a fee and may determine the amount of such fee for such class or classes: *Provided*, That the amount of the fee shall only be to compensate for the costs of administering such registration program: *Provided further*, That any such registration made with either the board or the state board shall preclude a further registration with any other board or the state board. [1969 ex.s. c 168 § 19; 1967 c 238 § 28.]

70.94.152 Notice may be required of construction of new contaminant source—Submission of plans—Approval, disapproval—Emission control. (1) The department of ecology or board of any authority may require notice of the construction, installation, or establishment of any new air contaminant sources except single family and duplex dwellings. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: *Provided*, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: *Provided further*, That any such notice given to either the board or to the department of ecology shall preclude a further notice to be given to any other board or to the department of ecology. Within thirty days of its receipt of such notice, the department of ecology or board may require, as a condition precedent to the construction, installation, or establishment of the air contaminant source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary in order to determine whether the proposed construction, installation, or establishment will be in accord with applicable rules and regulations in force pursuant to this chapter, and will provide all known available and reasonable methods of emission control. If on the basis of plans, specifications, or other information required pursuant to this section the department of ecology or board determines that the proposed construction, installation, or establishment will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto, or will not provide all known available and reasonable means of emission control, it shall issue an order for the prevention of the construction, installation, or establishment of the air contaminant source or sources. If on the basis of plans, specifications, or other information required pursuant to this section, the department of ecology or board determines that the proposed construction, installation, or establishment will be in accord with this chapter, and the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto and will provide all known available and reasonable methods of emission control, it shall issue an order of approval of the construction, installation, and establishment of the air contaminant source or sources, which order may provide such conditions of operation as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto.

(2) For the purposes of this chapter, addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction or installation or establishment of a new air contaminant source. The determination, under subsection (1) of this section, of whether a proposed construction, installation, or establishment will be in accord with this chapter and the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto shall include a determination of whether the operation of the new air contaminant source at the location

proposed will cause any ambient air quality standard to be exceeded.

(3) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(4) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) hereof shall be maintained in good working order.

(5) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his obligation to comply with any emission control requirements or with any other provision of law. [1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29.]

70.94.155 Control of emissions—Schedules of compliance. Whenever any regulation relating to emission standards or other requirements for the control of emissions is adopted which provides for compliance with such standards or requirements no later than a specified time after the date of adoption of the regulation, the appropriate activated air pollution control authority or, if there be none, the department of ecology shall, by regulatory order, issue to air contaminant sources subject to the standards or requirements, schedules of compliance setting forth timetables for the achievement of compliance as expeditiously as practicable but in no case later than the time specified in the regulation. Interim dates in such schedules for the completion of steps of progress toward compliance shall be as enforceable as the final date for full compliance therein. [1973 1st ex.s. c 193 § 3.]

70.94.170 Control officer. Any activated authority which has adopted an ordinance, resolution, or valid rules and regulations as provided herein for the control and prevention of air pollution shall appoint a control officer, who shall observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution. [1969 ex.s. c 168 § 21; 1967 c 238 § 30; 1957 c 232 § 17.]

70.94.181 Variances—Application for—Considerations—Limitations—Renewals—Review.

(1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment may apply to the department of ecology where it has regulatory authority under RCW 70.94.390, 70.94.395, 70.94.410, and 70.94.420, or board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the department of ecology or board may require. The department of ecology or board may grant such variance, but only after public hearing or due notice, if it finds that:

(a) The emissions occurring or proposed to occur do not endanger public health or safety; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the department of ecology or board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the department of ecology or board may prescribe.

(b) If the application for variance shows that there is no automobile fragmentizer within a reasonable distance of the wrecking yard for which the variance is sought, a variance will be granted for a period not to exceed three years for commercial burning of automobile hulks, subject to such conditions as the department of ecology may impose as to climatic conditions and hours during which burning of such hulks may be carried out: *Provided, however,* That any variance granted hereunder shall be of no force and effect after July 1, 1970.

(c) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the department of ecology or board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(d) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in item (a), (b) and (c) of this subparagraph, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the department of ecology or board on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the state board or board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the department of ecology or board shall give public notice of such application in accordance

with rules and regulations of the department of ecology or board.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the department of ecology or board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the department of ecology or board may obtain judicial review thereof under the provisions of chapter 34.04 RCW as now or hereafter amended.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of *RCW 70.94.415 to any person or his property.

(7) An application for a variance, or for the renewal thereof, submitted to the department of ecology or board pursuant to this section shall be approved or disapproved by the department or board within sixty-five days of receipt unless the applicant and the department of ecology or board agree to a continuance. [1974 ex.s. c 59 § 1; 1969 ex.s. c 168 § 22; 1967 c 238 § 31.]

*Reviser's note: "RCW 70.94.415" was repealed by 1971 ex.s. c 194 § 7.

70.94.200 Investigation of conditions by control officer or secretary of social and health services—Entering private, public property. For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, a control officer, the secretary of social and health services or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the secretary of social and health services, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. [1979 c 141 § 121; 1967 c 238 § 32; 1957 c 232 § 20.]

70.94.205 Confidentiality of records and information. Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the department of ecology or the board of any authority pursuant to any sections in chapter 70.94 RCW, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the department of ecology or board. Nothing herein shall be construed to prevent the use of records or information by the department of ecology or board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: *Provided*, That such analyses or summaries do not reveal any information otherwise confidential under the

provisions of this section: *Provided further*, That emission data furnished to or obtained by the department of ecology or board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the department of ecology or board. [1973 1st ex.s. c 193 § 4; 1969 ex.s. c 168 § 23; 1967 c 238 § 33.]

70.94.211 Violations—Notice—Action by governing body, board or control officer—Hearing—Action by board. Whenever the board or the control officer has reason to believe that any provision of this chapter or any ordinance, resolution, rule or regulation relating to the control or prevention of air pollution has been violated, such board or control officer may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the ordinance, resolution, rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the board or the control officer may require that the alleged violator or violators appear before the board for a hearing, or in addition to or in place of an order or hearing, the board may initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435. [1974 ex.s. c 69 § 4; 1970 ex.s. c 62 § 57; 1969 ex.s. c 168 § 24; 1967 c 238 § 34.]

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.221 Order final unless appealed to pollution control hearings board. Any order issued by the board or by the control officer, shall become final unless such order is appealed to the hearings board as provided in chapter 43.21B RCW. [1970 ex.s. c 62 § 58; 1969 ex.s. c 168 § 25; 1967 c 238 § 35.]

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.222 Order—Finality—Review (as amended by 1970 ex.s. c 41 § 2). Any order issued by the board after a hearing shall become final unless no later than thirty days after the issuance of such order, a petition requesting judicial review is filed in accordance with the provisions of chapter 34.04 RCW as now or hereafter amended. When such a petition is filed, the superior court shall initiate a hearing pursuant to RCW 34.04.130 within ninety days after the receipt of the petition requesting judicial review. Every appeal from a decision of the superior court shall be heard by the appropriate appellate court as soon as possible. Such appeal shall be considered a case involving issues of broad public import requiring prompt and ultimate determination. [1970 ex.s. c 41 § 2; 1969 ex.s. c 168 § 26; 1967 c 238 § 36.]

70.94.222 Order—Finality—Review (as amended by 1970 ex.s. c 62 § 59). Any order issued by the board after a hearing shall become final unless no later than thirty days after the issuance of such order, a notice of appeal is filed with the hearings board as provided in chapter 43.21B RCW. [1970 ex.s. c 62 § 59; 1969 ex.s. c 168 § 26; 1967 c 238 § 36.]

Reviser's note: RCW 70.94.222 was amended twice in the 1970 extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections twice amended in the same session, see RCW 1.12.025.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.223 Order—Stay pending final determination. Any order of the control officer or board shall be stayed pending final determination of any hearing or appeal taken in accordance with the provisions herein, unless after notice and hearing, the superior court shall determine that an emergency exists which is of such nature as to require that such order be in effect during the pendency of such hearing or appeal.

Nothing in this chapter shall prevent the control officer or board from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means. [1969 ex.s. c 168 § 27; 1967 c 238 § 37.]

70.94.230 Rules of authority supersede local rules, regulations, etc.—Exceptions. The rules and regulations hereafter adopted by an authority under the provisions of this chapter shall supersede the existing rules, regulations, resolutions and ordinances of any of the component bodies included within said authority in all matters relating to the control and enforcement of air pollution as contemplated by this chapter: *Provided, however,* That existing rules, regulations, resolutions and ordinances shall remain in effect until such rules, regulations, resolutions and ordinances are superseded as provided in this section: *Provided further,* That nothing herein shall be construed to supersede any local county, or city ordinance or resolution, or any provision of the statutory or common law pertaining to nuisance; nor to affect any aspect of employer–employee relationship relating to conditions in a place of work, including without limitation, statutes, rules or regulations governing industrial health and safety standards or performance standards incorporated in zoning ordinances or resolutions of the component bodies where such standards relating to air pollution control or air quality containing requirements not less stringent than those of the authority. [1969 ex.s. c 168 § 28; 1967 c 238 § 38; 1957 c 232 § 23.]

70.94.231 Dissolution of prior districts—Continuation of rules and regulations until superseded. Upon the date that an authority begins to exercise its powers and functions, all districts formed as a district under chapter 70.94 RCW prior to June 8, 1967 which previously were wholly or partially composed of one or more cities or towns located within such activated authority shall be considered to be dissolved but its rules and regulations in force on such date shall remain in effect until superseded by the rules and regulations of the authority as provided in RCW 70.94.230. In such event, the board of any such district shall proceed to wind up the affairs of the district in the same manner as if the district were dissolved as provided in RCW 70.94.260. [1969 ex.s. c 168 § 29; 1967 c 238 § 39.]

70.94.232 Local or regional control program considered activated authority—Construction of prior ordinances, resolutions, rules or regulations. (1) Any local or

regional air pollution control program formed as a district under chapter 70.94 RCW prior to June 8, 1967 which is composed of one or more counties and the cities and towns therein, and whose boundaries are coextensive with the boundaries of one or more counties, shall, upon June 8, 1967, be considered an activated authority, provided that within six months of June 8, 1967 the board of directors shall be reorganized to conform to the provisions of RCW 70.94.100, 70.94.110 and 70.94.120.

(2) Nothing in this chapter except those sections which do so expressly shall be construed to supersede or nullify the ordinances, resolutions, rules or regulations of any local or regional air pollution control program in operation on June 8, 1967, but such local or regional programs shall be subject to the provisions of RCW 70.94.230, 70.94.231, 70.94.232, 70.94.380, 70.94.395, 70.94.400 and *70.94.415. [1967 c 238 § 40.]

*Reviser's note: RCW "70.94.415" was repealed by 1971 ex.s. c 194 § 7.

70.94.240 Air pollution control advisory council. The board of any authority shall appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of this chapter. The council shall consist of five appointed members who are residents of the authority and who are preferably skilled and experienced in the field of air pollution control, two of whom shall serve as representatives of industry. The chairman of the board of any such authority shall serve as ex officio member of the council and be its chairman. Each member of the council shall receive from the authority per diem and travel expenses in an amount not to exceed that provided for the state board in this chapter (but not to exceed one thousand dollars per year) for each full day spent in the performance of his duties under this chapter. [1969 ex.s. c 168 § 30; 1967 c 238 § 41; 1957 c 232 § 24.]

70.94.260 Dissolution of district—Deactivation of authority. An air pollution control authority may be deactivated prior to the term provided in the original or subsequent agreement by the county or counties comprising such authority upon the adoption by the board, following a hearing held upon ten days notice, to said counties, of a resolution for dissolution or deactivation and upon the approval by the legislative authority of each county comprising the authority. In such event, the board shall proceed to wind up the affairs of the authority and pay all indebtedness thereof. Any surplus of funds shall be paid over to the counties comprising the authority in proportion to their last contribution. Upon the completion of the process of closing the affairs of the authority, the board shall by resolution entered in its minutes declare the authority deactivated and a certified copy of such resolution shall be filed with the secretary of state and the authority shall be deemed inactive. [1979 1st ex.s. c 30 § 12; 1969 ex.s. c 168 § 31; 1967 c 238 § 43; 1957 c 232 § 26.]

70.94.305 Powers, duties and functions of state air pollution control board, executive director thereof, transferred to department of ecology. See RCW 43.21A.060.

70.94.331 Powers and duties of state board. (1) The state board shall have all the powers as provided in RCW 70.94.141.

(2) The state board, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapter 42.32 RCW and chapter 34.04 RCW shall:

(a) Adopt rules and regulations establishing air quality objectives and air quality standards;

(b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, but in no event may less stringent standards be enacted by an authority without the prior approval of the state board after public hearing and due notice to interested parties;

(c) Adopt by rule and regulation air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter.

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonable foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.

(4) The state board is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(5) The state board is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

(6) The state board shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The state board shall encourage local units of government to handle air pollution problems within their respective jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The state board shall have the power to require the addition to or deletion of a county from an existing authority in order to carry out the purposes of this chapter: *Provided, however,* That no such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter 34.04 RCW. [1969 ex.s. c 168 § 34; 1967 c 238 § 46.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.332 Violations—Notice—Action by department. Whenever the department has reason to believe that any provision of this chapter or any rule or regulation adopted by the state board or being enforced by the state board under RCW 70.94.410 relating to the control or prevention of air pollution has been violated, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before the state board or a duly appointed hearing officer for a hearing at a time and place specified in the notice given at least twenty days prior to such hearing and answer the charges complained of, or in addition to or in place of an order or hearing, the department may initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435. [1967 c 238 § 47.]

70.94.333 Orders of department—Hearings—Judicial review. (1) Any order issued by the department shall become final unless, no later than twenty days after the date the notice and order are served, the person aggrieved by the order petitions for a hearing before the state board. Upon receipt of the petition, the state board shall hold a hearing after not less than twenty days prior notice to petitioning parties.

(2) If, after a hearing held as a result of a petition to the state board by a person aggrieved by an order, the state board finds that a violation has occurred or is occurring, it shall affirm or modify the order previously issued, or if the finding made is that no violation has occurred or is occurring, the order shall be rescinded. If, after a hearing held in lieu of an order, the state board finds that a violation has occurred or is occurring, it shall issue an appropriate order or orders for the prevention, abatement or control of the emissions involved or for the taking of such other corrective actions as may be appropriate. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating or controlling the emissions.

(3) An order issued by the state board after a hearing shall become final unless no later than thirty days after the issuance and service of such order, a petition requesting judicial review is filed in the superior court of the county in which the violation is alleged to have occurred or is alleged to be likely to occur. Review shall be conducted without a jury de novo on the record in the superior court.

(4) The reviewing court may affirm or reverse the decision of the governing body or board. In addition, any party may move the court to remand the case to the state board, in the interests of justice, for the purpose of adducing additional specified and material evidence, and

findings thereon: *Provided*, That such party shall show reasonable grounds for the failure to adduce such evidence previously before the state board.

(5) Any order of the department or the state board shall be stayed pending final determination of any hearing or appeal taken in accordance with the provisions herein, unless after notice and hearing, the superior court shall determine that an emergency exists which is of such nature as to require that such order be in effect during the pendency of such hearing or appeal.

(6) Nothing in this chapter shall prevent the department or the state board from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

(7) Any hearing held under RCW 70.94.181 or 70.94.333 by the state board shall be conducted in accord with RCW 34.04.090 through 34.04.130. [1967 c 238 § 48.]

70.94.334 Appointment of hearing officer—Powers and duties. (1) In all instances where the department of ecology or board of any authority is permitted or required to hold hearings under the provisions of this chapter, such hearings shall be held before the department of ecology or board of any authority, or the state board or board of any authority may appoint a hearing officer.

(2) A duly appointed hearing officer shall have all the powers, rights, and duties of the department of ecology or board of any authority relating to the conduct of hearings. [1973 1st ex.s. c 193 § 5; 1969 ex.s. c 168 § 35; 1967 c 238 § 49.]

70.94.350 Contracts, agreements for use of personnel by secretary—Reimbursement—Merit system regulations waived. The secretary of social and health services is authorized to contract for or otherwise agree to the use of personnel of municipal corporations or other agencies or private persons; and the secretary of social and health services is further authorized to reimburse such municipal corporations or agencies for the employment of such personnel. Merit system regulations or standards for the employment of personnel may be waived for personnel hired under contract as provided for in this section. The secretary of social and health services shall provide, within available appropriations, for the scientific, technical, legal, administrative, and other necessary services and facilities for the functioning of the state board. The necessary staff, services, and facilities shall be administered through an appropriate organizational unit of the department of social and health services under the direction of the executive director of the state board. [1979 c 141 § 122; 1967 c 238 § 45; 1961 c 188 § 6.]

70.94.370 Powers and rights of governmental units and persons are not limited by act or recommendations. No provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation:

(1) On the power of any city, town or county to declare, prohibit and abate nuisances.

(2) On the power of the secretary of social and health services to provide for the protection of the public health under any authority presently vested in that office or which may be hereafter prescribed by law.

(3) On the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(4) On the right of any person to maintain at any time any appropriate action for relief against any air pollution. [1979 c 141 § 123; 1967 c 238 § 59; 1961 c 188 § 8.]

70.94.380 Emission control requirements. (1) Every activated authority operating an air pollution control program shall have requirements for the control of emissions which are no less stringent than those adopted by the department of ecology for the geographic area in which such air pollution control program is located. Less stringent requirements than compelled by this section may be included in a local or regional air pollution control program only after approval by the department of ecology following demonstration to the satisfaction of the department of ecology that the proposed requirements are consistent with the purposes of this chapter: *Provided*, That such approval shall be preceded by public hearing, of which notice has been given in accordance with chapter 42.32 RCW. The department of ecology, upon receiving evidence that conditions have changed or that additional information is relevant to a decision with respect to the requirements for emission control, may, after public hearing on due notice, withdraw any approval previously given to a less stringent local or regional requirement.

Nothing in this chapter shall be construed to prevent a local or regional air pollution control authority from adopting and enforcing more stringent emission control requirements than those adopted by the department of ecology and applicable within the jurisdiction of the local or regional air pollution control authority. [1979 1st ex.s. c 30 § 13; 1969 ex.s. c 168 § 36; 1967 c 238 § 50.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.385 State financial aid—Application for—Requirements. (1) Any authority may apply to the state board for state financial aid. The state board shall by rule and regulation establish the ratio of state funds to the local funds taking into consideration available federal and state funds. Any such aid shall be expended from the general fund from such appropriations as the legislature may provide for this purpose: *Provided*, That federal funds shall be utilized to the maximum unless otherwise approved by the state board: *Provided further*, That the ratio of state funds to local funds of the previous year shall not be changed without a public hearing held by the state board.

(2) Before any such application is approved and financial aid is given or approved by the state board, the authority shall demonstrate to the satisfaction of the state board that it is fulfilling the requirements of RCW 70.94.380, or, if the state board has not adopted ambient air quality standards and objectives as permitted by

RCW 70.94.331, the authority shall demonstrate to the satisfaction of the state board that it is acting in good faith and doing all that is possible and reasonable to control and prevent air pollution within its jurisdictional boundaries and to carry out the purposes of this chapter.

(3) The state board shall adopt rules and regulations requiring the submission of such information by each authority including the submission of its proposed budget and a description of its program in support of the application for state financial aid as necessary to enable the state board to determine the need for state aid. [1969 ex.s. c 168 § 37; 1967 c 238 § 51.]

70.94.390 Hearing upon activation of authority—Finding—Assumption of jurisdiction by state board—Expenses. The state board may, at any time and on its own motion, hold a hearing to determine if the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist in any area of the state. Notice of such hearing shall be conducted in accordance with chapter 42.32 RCW and chapter 34.04 RCW. If at such hearing the state board finds that air pollution exists or is likely to occur in a particular area, and that the purposes of this chapter and the public interest will be best served by the activation of an authority it shall designate the boundaries of such area and set forth in a report to the appropriate county or counties recommendations for the activation of an authority: *Provided*, That if at such hearing the state board determines that the activation of an authority is not practical or feasible for the reason that a local or regional air pollution control program cannot be successfully established or operated due to unusual circumstances and conditions, but that the control and/or prevention of air pollution is necessary for the purposes of this chapter and the public interest, it may assume jurisdiction and so declare by order. Such order shall designate the geographic area in which, and the effective date upon which, the state board will exercise jurisdiction for the control and/or prevention of air pollution. The state board shall exercise its powers and duties in the same manner as if it had assumed authority under RCW 70.94.410.

All expenses incurred by the state board in the control and prevention of air pollution in any county pursuant to the provisions of RCW 70.94.390 and 70.94.410 shall constitute a claim against such county. The state board shall certify the expenses to the auditor of the county, who promptly shall issue his warrant on the county treasurer payable out of the current expense fund of the county. In the event that the amount in the current expense fund of the county is not adequate to meet the expenses incurred by the state board, the state board shall certify to the state treasurer that they have a prior claim on any money in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer as provided in RCW 82.08.170. In the event that the amount in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer is not adequate to meet the expenses incurred by the state board, the state board shall certify to the state treasurer that

they have a prior claim on any excess funds from the liquor revolving fund that are to be distributed to that county as provided in RCW 66.08.190 through 66.08-.220. All moneys that are collected as provided in this section shall be placed in the general fund in the account of the state air pollution control board. [1969 ex.s. c 168 § 38; 1967 c 238 § 52.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.395 Control of particular types or classes of air contaminant sources—Assumption by state board—Hearing—Standards. If the state board finds, after public hearing, upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a state-wide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules and regulations to control and/or prevent the emission of air contaminants from such source: *Provided*, That an authority may, after public hearing and a finding by the board of a need for more stringent rules and regulations than those adopted by the state board under this section, propose the adoption of such rules and regulations by the state board for the control of emissions from the particular type or class or air contaminant source within the geographical area of the authority. The state board shall hold a public hearing and shall adopt the proposed rules and regulations within the area of the requesting authority, unless it finds that the proposed rules and regulations are inconsistent with the rules and regulations adopted by the state board under this section: *Provided, further*, That when such standards are adopted by the state board it shall delegate to the authority all powers necessary for their enforcement at the request of the authority: *Provided*, That the state board may delegate the responsibility for the enforcement of such rules and regulations to any authority which it deems capable of enforcing such regulations: *Provided further*, That if after public hearing the state board finds that the regulation on a state-wide basis of a particular type of class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of the state, the state board may relinquish exclusive jurisdiction over such source. [1969 ex.s. c 168 § 39; 1967 c 238 § 53.]

70.94.400 Order activating authority—Filing—Hearing—Amendment of order. If, at the end of ninety days after the state board issues a report as provided for in RCW 70.94.390, to appropriate county or counties recommending the activation of an authority such county or counties have not performed those actions recommended by the state board, and the state board is still of the opinion that the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist, then the state board may, at its discretion, issue an order activating an authority. Such order, a certified copy of which shall be filed with the secretary of state, shall

specify the participating county or counties and the effective date by which the authority shall begin to function and exercise its powers. Any authority activated by order of the state board shall choose the members of its board as provided in RCW 70.94.100 and begin to function in the same manner as if it had been activated by resolutions of the county or counties included within its boundaries. The state board may, upon due notice to all interested parties, conduct a hearing in accordance with chapter 42.32 RCW and chapter 34.04 RCW within six months after the order was issued to review such order and to ascertain if such order is being carried out in good faith. At such time the state board may amend any such order issued if it is determined by the state board that such order is being carried out in bad faith or the state board may take the appropriate action as is provided in RCW 70.94.410. [1969 ex.s. c 168 § 40; 1967 c 238 § 54.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.405 Hearing on effectiveness of prevention and control program—Report. At any time after an authority has been activated for no less than one year, the state board may, on its own motion, conduct a hearing held in accordance with chapter 42.32 RCW and chapter 34.04 RCW, as now or hereafter amended to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible under the circumstances: *Provided*, That no such hearing shall be held within one year of June 8, 1967. If at such hearing the board finds that such authority is not carrying out its air pollution control or prevention program in good faith, or is not doing all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, it shall set forth in a report to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and (2) guidelines which will assist the authority in carrying out the recommendations of the state board. [1969 ex.s. c 168 § 41; 1967 c 238 § 55.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.410 Assumption of control by state board, when—Reestablishment of program—Withdrawal of state board. (1) If, after thirty days from the time that the state board issues a report or order to an authority under RCW 70.94.400 and 70.94.405, such authority has not taken any action which indicates that it is attempting in good faith to implement the recommendations or actions of the state board as set forth in the report or order, the state board may, by order, declare as null and void any or all ordinances, resolutions, rules or regulations of such authority relating to the control and/or prevention of air pollution, and at such time the state board shall become the sole body with authority to make and enforce rules and regulations to the control and/or prevention of air pollution within the geographical area of such authority. In this connection the state board may assume all those powers which are given to it

by law to effectuate the purposes of this chapter. The state board may, by order, continue in effect and enforce those provisions of the ordinances, resolutions, or rules and regulations of such authority which are not less stringent than those requirements which the state board may have found applicable to the area under RCW 70.94.331 until such time as the board adopts its own rules and regulations. Any rules and regulations promulgated and any enforcement action, as provided in RCW 70.94.333, taken by the state board shall be subject to the provisions of chapter 34.04 RCW as it now appears or may hereinafter be amended and subject to RCW 70.94.425 and 70.94.435 to the extent that they are not inconsistent with chapter 34.04 RCW.

(2) No provision of this chapter is intended to prohibit any authority from reestablishing its air pollution control program which meets with the approval of the state board and which complies with the purposes of this chapter and with applicable rules and regulations and orders of the state board.

(3) Nothing in this chapter shall prevent the state board from withdrawing the exercise of its jurisdiction over an authority upon its own motion: *Provided*, That the state board has found at a hearing held in accordance with chapter 42.32 RCW and chapter 34.04 RCW as now or hereafter amended, that the air pollution prevention and control program of such authority will be carried out in good faith or that such program will do all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction. Upon the withdrawal of the state board, the state board shall prescribe certain recommendations as to how air pollution prevention and/or control is to be effectively accomplished and guidelines which will assist the authority in carrying out the recommendations of the state board. [1969 ex.s. c 168 § 42; 1967 c 238 § 56.]

Reviser's note: See note (1) following RCW 70.94.141.

70.94.420 Cooperation by state departments and agencies—Potential pollution sources—Permits. (1) It is declared to be the intent of the legislature of the state of Washington that any state department or agency having jurisdiction over any building, installation, or other property shall cooperate with the state board and with air pollution control agencies in preventing and/or controlling the pollution of the air in any area insofar as the discharge of the matter from or by such building, installation, or other property may cause or contribute to pollution of the air in such area. Such state department or agency shall comply with the provisions of this chapter and with any ordinance, resolution, rule or regulation issued hereunder in the same manner as any other person subject to such laws, rules or regulations.

(2) In addition to its other powers and duties prescribed by law, the state board may establish classes of potential pollution sources for which any state department or agency having jurisdiction over any building, installation, or other property, which is not located within the geographical boundaries of any authority which has an air pollution control and/or prevention program in effect, shall, before discharging any matter into the air, obtain a permit from the state board for

such discharge, such permits to be issued for a specified period of time to be determined by the state board and subject to revocation if the state board finds that such discharge is endangering the health and welfare of any persons. Such permits may also be required for any such building, installation, or other property which is located within the geographical boundaries of any authority which has an air pollution control and prevention program in effect if the standards set by the state board for state departments and agencies are more stringent than those of the authority. In connection with the issuance of any permits under this section, there shall be submitted to the state board such plans, specifications, and other information as it deems relevant thereto and under such other conditions as it may prescribe. [1969 ex.s. c 168 § 44; 1967 c 238 § 58.]

70.94.425 Restraining orders—Injunctions. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, the governing body or board or the state board, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order. [1967 c 238 § 60.]

70.94.430 Penalties. Any person who violates any of the provisions of this chapter, or any ordinance, resolution, rule or regulation in force pursuant thereto, other than RCW 70.94.205, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than two hundred fifty dollars, or by imprisonment for not more than ninety days, or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation.

Any person who wilfully violates any of the provisions of this chapter or any ordinance, resolution, rule or regulation in force pursuant thereto shall be guilty of a gross misdemeanor. Each day upon which such wilful violation occurs shall constitute a separate offense. Upon conviction the offender shall be punished by a fine of not less than one hundred dollars for each offense.

Any person who wilfully violates RCW 70.94.205 or any other provision of *this act shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment. [1973 1st ex.s. c 176 § 1; 1967 c 238 § 61.]

*Reviser's note: "this act" apparently consists of the amendments to RCW 70.94.430 and 70.94.431 by 1973 1st ex.s. c 176.

70.94.431 Additional or alternative penalty—Enforcement. In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW or any of the rules

and regulations of the department or the board shall incur a penalty in the form of a fine in an amount not to exceed two hundred fifty dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalty shall become due and payable when the person incurring the same receives a notice in writing from the director or his designee or the control officer of the authority or his designee describing the violation with reasonable particularity and advising such person that the penalty is due unless a request is made for a hearing to the hearings board as provided for in chapter 43.21B RCW. When a request is made for a hearing, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order affirming the penalty in whole or part. If the amount of such penalty is not paid to the department or the board within thirty days after it becomes due and payable, and a request for a hearing has not been made, the attorney general, upon the request of the director or his designee, or the attorney for the local authority, upon request of the board or control officer, shall bring an action to recover such penalty in the superior court of the county in which the violation occurred. All penalties recovered under this section by the state board shall be paid into the state treasury and credited to the general fund or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds.

To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

In all actions brought in the superior court for the recovery of penalties hereunder, the procedure and rules of evidence shall be the same as in an ordinary civil action. [1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53.]

70.94.435 Additional means for enforcement of chapter. As an additional means of enforcing this chapter, the governing body or board may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter or of any ordinance, resolution, rule or regulation adopted pursuant hereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the ordinances, resolutions, rules or regulations, or order issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court as provided in RCW 70.94.425. [1967 c 238 § 62.]

70.94.440 Short title. This chapter may be known and cited as the "Washington Clean Air Act". [1967 c 238 § 63.]

70.94.445 Air pollution control facilities—Tax exemptions and credits. See chapter 82.34 RCW.

70.94.510 Policy to cooperate with federal government. It is declared to be the policy of the state of Washington through the state air pollution control board to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts, and the state air pollution control board is authorized and directed to implement and enforce the provisions of this chapter in carrying out this policy as follows:

(1) To accept and administer grants from the federal government for carrying out the provisions of this chapter.

(2) To take all action necessary to secure to the state the benefits of the federal clean air act. [1969 ex.s. c 168 § 45.]

70.94.600 Reports of authorities to department of ecology—Contents. All authorities in the state shall submit quarterly reports to the department of ecology detailing the current status of air pollution control regulations in the authority and, by county, the progress made toward bringing all sources in the authority into compliance with authority standards. [1979 1st ex.s. c 30 § 14; 1969 ex.s. c 168 § 52.]

70.94.650 Burning permits for weed abatement, instruction or agriculture activities—Issuance—Activities exempted from requirement. Any person who proposes to set fires in the course of the following:

(1) Weed abatement,

(2) Instruction in methods of fire fighting (except forest fires), or

(3) Disease prevention relating to agricultural activities, shall, prior to carrying out the same, obtain a permit from an air pollution control authority or the department of ecology, as appropriate. Each such authority and the department of ecology shall, by rule or ordinance, establish a permit system to carry out the provisions of this section except as provided in RCW 70.94.660. General criteria of state-wide applicability for ruling on such permits shall be established by the department, by rule or regulation, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both: *Provided*, That all permits so issued shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise the applicant is engaged in. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section shall relieve the applicant from obtaining permits, licenses or other

approvals required by any other law: *Provided further*, That an application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, and development of physiological conditions conducive to increased crop yield, shall be granted within fourteen days from the date such application is filed: *Provided*, That nothing herein shall prevent a householder from setting fire in the course of burning leaves, clippings or trash when otherwise permitted locally. Nothing contained herein shall prohibit Indian campfires or the sending of smoke signals if part of a religious ritual. [1971 ex.s. c 232 § 1.]

70.94.654 Delegation of permit issuance and enforcement to counties. Whenever the department of ecology shall find that any county which is outside the jurisdictional boundaries of an activated air pollution control authority is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70.94.650(1) and (3) and desirous of doing so, the department of ecology may delegate all powers necessary for the issuance and enforcement of permits for any or all of the kinds of burning to the county: *Provided*, That such delegation may be withdrawn by the department of ecology upon a finding that the county is not effectively administering the permit program. [1973 1st ex.s. c 193 § 6.]

70.94.656 Open burning of field and turf grasses grown for seed—Alternatives—Studies—Funding—Procedures—Limitations. It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Prior to the issuance of any permit for such burning under RCW 70.94.650, there shall be collected a fee not to exceed fifty cents per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the general fund. The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in this subsection. For the conduct of any such study or studies, the department may contract with public or private entities: *Provided*, That whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund.

(2) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(3) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(4) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. [1973 1st ex.s. c 193 § 7.]

Grass burning research advisory committee: Chapter 43.21E RCW.

70.94.660 Burning permits for abating or prevention of forest fire hazards, instruction or silvicultural operations—Issuance. The department of natural resources shall have the responsibility for issuing and regulating burning permits required by it relating to the following activities declared to be for the protection of life or property and/or in the public welfare:

- (1) Abating a forest fire hazard;
- (2) Prevention of a fire hazard;
- (3) Instruction of public officials in methods of forest fire fighting; and
- (4) Any silvicultural operation to improve the forest lands of the state. [1971 ex.s. c 232 § 2.]

Burning permits, issuance, air pollution a factor: RCW 76.04.150, 76.04.170.

Disposal of forest debris: RCW 76.04.310.

70.94.670 Burning permits for abating or prevention of forest fire hazards, instruction or silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris. The department of natural resources in granting burning permits for fires for the purposes set forth in RCW 70.94.660 shall condition the issuance and use of such permits to comply with air quality standards established by the department of ecology after full consultation with the department of natural resources. Such burning shall not cause the state air quality standards for suspended particulate matter to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution from other sources. Air quality standards for suspended particulate matter shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when the air exceeds or threatens to exceed the standards over such critical areas. The suspended particulate matter

shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established primary air mass stations or primary ground level monitoring stations over such designated areas. The department of natural resources shall set forth smoke dispersal objectives designed to minimize any air pollution from smoke from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging to reduce forest fire hazards and shall encourage development and use of procedures and equipment to burn forest debris in a manner that will produce less smoke. The department of natural resources shall, whenever practical, encourage development and use of alternative acceptable disposal methods. Such alternative methods shall be evaluated as to the relative impact on air, water and land pollution, and their financial feasibility. [1971 ex.s. c 232 § 3.]

70.94.680 Extension of burning permit requirements. The department of natural resources may extend burning permit requirements to cover the types of burning set forth in RCW 70.94.650 through 70.94.700 during the period from October 15 through March 15 in order to protect the air quality, and shall extend such requirements if the department of ecology deems such action necessary to avoid an air pollution emergency where there is a high danger that normal operations at air contaminant sources in the area will be detrimental to the public health or safety. [1971 ex.s. c 232 § 4.]

70.94.690 Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits. In the regulation of outdoor burning not included in RCW 70.94.660 requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while still accomplishing the objectives and responsibilities of the respective agencies.

Permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning or emergency condition exists as defined in the episode criteria of the department of ecology. [1971 ex.s. c 232 § 5.]

70.94.700 Rules and regulations. The department of natural resources and the department of ecology may adopt rules and regulations necessary to implement their respective responsibilities under the provisions of RCW 70.94.650 through 70.94.700. [1971 ex.s. c 232 § 6.]

70.94.710 Air pollution episodes—Legislative finding—Declaration of policy. The legislature finds that whenever meteorological conditions occur which reduce the effective volume of air into which air contaminants are introduced, there is a high danger that normal operations at air contaminant sources in the area affected will be detrimental to public health or safety. Whenever

such conditions, herein denominated as air pollution episodes, are forecast, there is a need for rapid short-term emission reduction in order to avoid adverse health or safety consequences.

Therefore, it is declared to be the policy of this state that an episode avoidance plan should be developed and implemented for the temporary reduction of emissions during air pollution episodes.

It is further declared that power should be vested in the governor to issue emergency orders for the reduction or discontinuance of emissions when such emissions and weather combine to create conditions imminently dangerous to public health and safety. [1971 ex.s. c 194 § 1.]

70.94.715 Air pollution episodes—Episode avoidance plan—Contents—Source emission reduction plans—Authority—Considered orders. The department of ecology is hereby authorized to develop an episode avoidance plan providing for the phased reduction of emissions wherever and whenever an air pollution episode is forecast. Such an episode avoidance plan shall conform with any applicable federal standards and shall be effective state-wide. The episode avoidance plan may be implemented on an area basis in accordance with the occurrence of air pollution episodes in any given area.

The department of ecology may delegate authority to adopt source emission reduction plans and authority to implement all stages of occurrence up to and including the warning stage, and all intermediate stages up to the warning stage, in any area of the state, to the air pollution control authority with jurisdiction therein.

The episode avoidance plan, which shall be established by regulation in accordance with chapter 34.04 RCW, shall include, but not be limited to the following:

(1) The designation of episode criteria and stages, the occurrence of which will require the carrying out of pre-planned episode avoidance procedures. The stages of occurrence shall be (a) forecast, (b) alert, (c) warning, (d) emergency, and such intermediate stages as the department shall designate. "Forecast" means the presence of meteorological conditions that are conducive to accumulation of air contaminants and is the first stage of an episode. "Alert" means concentration of air contaminants at levels at which short-term health effects may occur, and is the second stage of an episode. "Warning" means concentrations are continuing to degrade, contaminant concentrations have reached a level which, if maintained, can result in damage to health, and additional control actions are needed and is the third level of an episode. "Emergency" means the air quality is posing an imminent and substantial endangerment to public health and is the fourth level of an episode;

(2) The requirement that persons responsible for the operation of air contaminant sources prepare and obtain approval from the director of source emission reduction plans, consistent with good operating practice and safe operating procedures, for reducing emissions during designated episode stages;

(3) Provision for the director of the department of ecology or his authorized representative, or the air pollution control officer if implementation has been delegated, on the satisfaction of applicable criteria, to declare and terminate the forecast, alert, warning and all intermediate stages, up to the warning episode stage, such declarations constituting orders for action in accordance with applicable source emission reduction plans;

(4) Provision for the governor to declare and terminate the emergency stage and all intermediate stages above the warning episode stage, such declarations constituting orders in accordance with applicable source emission reduction plans;

(5) Provisions for enforcement by state and local police, personnel of the departments of ecology and social and health services, and personnel of local air pollution control agencies; and

(6) Provisions for reduction or discontinuance of emissions immediately, consistent with good operating practice and safe operating procedures, under an air pollution emergency as provided in RCW 70.94.720.

Source emission reduction plans shall be considered orders of the department and shall be subject to appeal to the pollution control hearings board according to the procedure in chapter 43.21B RCW. [1971 ex.s. c 194 § 2.]

70.94.720 Air pollution episodes—Declaration of air pollution emergency by governor. Whenever the governor finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to public health or safety, he may declare an air pollution emergency and may order the person or persons responsible for the operation of such air contaminant source or sources to reduce or discontinue emissions consistent with good operating practice, safe operating procedures and source emission reduction plans, if any, adopted by the department of ecology or any local air pollution control authority to which the department of ecology has delegated authority to adopt emission reduction plans. Orders authorized by this section shall be in writing and may be issued without prior notice or hearing. In the absence of the governor, any findings, declarations and orders authorized by this section may be made and issued by his authorized representative. [1971 ex.s. c 194 § 3.]

70.94.725 Air pollution episodes—Restraining orders, temporary injunctions to enforce orders—Procedure. Whenever any order has been issued pursuant to RCW 70.94.710 through 70.94.730, the attorney general, upon request from the governor, the director of the department of ecology, an authorized representative of either, or the attorney for a local air pollution control authority upon request of the control officer, shall petition the superior court of the county in which is located the air contaminant source for which such order was issued for a temporary restraining order requiring the immediate reduction or discontinuance of emissions from such source.

Upon request of the party to whom a temporary restraining order is directed, the court shall schedule a hearing thereon at its earliest convenience, at which time the court may withdraw the restraining order or grant such temporary injunction as is reasonably necessary to prevent injury to the public health or safety. [1971 ex.s. c 194 § 4.]

70.94.730 Air pollution episodes—Orders to be effective immediately. Orders issued to declare any stage of an air pollution episode avoidance plan under RCW 70.94.715, and to declare an air pollution emergency, under RCW 70.94.720, and orders to persons responsible for the operation of an air contaminant source to reduce or discontinue emissions, according to RCW 70.94.715 and 70.94.720 shall be effective immediately and shall not be stayed pending completion of review. [1971 ex.s. c 194 § 5.]

70.94.740 Limited outdoor burning—Policy. It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control. [1972 ex.s. c 136 § 1.]

70.94.745 Limited outdoor burning—Program. It shall be the responsibility and duty of the department of natural resources, department of ecology, fire districts and local air pollution control authorities to establish, through regulations, ordinances or policy, a limited burning program for the people of this state, consisting of a one-permit system, until such time as an alternate technology or method of disposing of the organic refuse described in this chapter shall have been developed which is reasonably economical and less harmful to the environment. It is the policy of this state to encourage the fostering and development of such alternate method or technology. [1972 ex.s. c 136 § 2.]

70.94.750 Limited outdoor burning—Fires permitted. The following outdoor fires described in this section may be burned subject to the provisions of the program established pursuant to RCW 70.94.755 for any area and subject to city ordinances, county resolutions, and rules and regulations of fire districts and laws and rules and regulations enforced by the department of natural resources:

(1) Fires consisting of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his designee.

(2) Fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects or agricultural pursuits for pest or disease control; provided the fires described in this subsection may be prohibited in those

areas having a general population density of one thousand or more persons per square mile. [1972 ex.s. c 136 § 3.]

70.94.755 Limited outdoor burning—Establishment of program. Each activated air pollution control authority, and the department of ecology in those areas outside the jurisdictional boundaries of an activated air pollution control authority, shall establish, through regulations, ordinances or policy, a program implementing the limited burning policy authorized by RCW 70.94.740 through 70.94.765. [1972 ex.s. c 136 § 4.]

70.94.760 Limited outdoor burning—Construction. Nothing contained in RCW 70.94.740 through 70.94.765 is intended to alter or change the provisions of RCW 70.94.660, 70.94.710 through 70.94.730, and 76.04.150 through 76.04.170. [1972 ex.s. c 136 § 5.]

70.94.765 Limited outdoor burning—Authority of local air pollution control authority or department of ecology to allow outdoor fires not restricted. Nothing in RCW 70.94.740 through 70.94.765 shall be construed as prohibiting a local air pollution control authority or the department of ecology in those areas outside the jurisdictional boundaries of an activated pollution control authority from allowing the burning of outdoor fires. [1972 ex.s. c 136 § 6.]

70.94.770 Burning wood by resident of single family residence. Except as provided in RCW 70.94.775 and 70.94.780, nothing in this chapter or in regulations implementing this chapter shall prevent a resident of a single family residence from burning wood, so long as it has not been treated by an application of prohibitive material or substances, and natural vegetation in the course of maintaining or improving the grounds of such residence: *Provided*, That the department of ecology or board of any authority may set conditions for such burning so as to reduce the impact on air quality. [1973 1st ex.s. c 193 § 8.]

70.94.775 Outdoor burning—Fires prohibited—Exceptions. No person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors except as provided in RCW 70.94.650: *Provided*, That agricultural heating devices which otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715;

(3) In any area which has been designated by the department of ecology or board of an activated authority as an area exceeding or threatening to exceed state or federal ambient air quality standards, or after July 1, 1976, state ambient air quality goals for particulates, except instructional fires permitted by RCW

70.94.650(2). [1974 ex.s. c 164 § 1; 1973 2nd ex.s. c 11 § 1; 1973 1st ex.s. c 193 § 9.]

70.94.780 Outdoor burning—Regulation and prohibition. In addition to any other powers granted to them by law, the fire protection agency authorized to issue burning permits may regulate or prohibit outdoor burning in order to prevent or abate the nuisances caused by such burning. [1973 1st ex.s. c 193 § 10.]

70.94.785 Plans approved pursuant to federal clean air act—Enforcement authority. Notwithstanding any provision of the law to the contrary, except RCW 70.94.660 through 70.94.690, the department of ecology, upon its approval of any plan (or part thereof) required or permitted under the federal clean air act, shall have the authority to enforce all regulatory provisions within such plan (or part thereof): *Provided*, That departmental enforcement of any such provision which is within the power of an activated authority to enforce shall be initiated only, when with respect to any source, the authority is not enforcing the provisions and then only after written notice is given the authority. [1973 1st ex.s. c 193 § 11.]

70.94.901 Construction—1967 c 238. This 1967 amendatory act shall not be construed to create in any way nor to enlarge, diminish or otherwise affect in any way any private rights in any civil action for damages. Any determination that there has been a violation of the provisions of this 1967 amendatory act or of any ordinance, rule, regulation or order issued pursuant thereto, shall not create by reason thereof any presumption or finding of fact or of law for use in any lawsuit brought by a private citizen. [1967 c 238 § 65.]

70.94.902 Construction, repeal of RCW 70.94.061–70.94.066—Saving. The following acts or parts of acts are each repealed:

- (1) Section 7, chapter 238, Laws of 1967, and RCW 70.94.061;
- (2) Section 8, chapter 238, Laws of 1967, and RCW 70.94.062;
- (3) Section 9, chapter 238, Laws of 1967, and RCW 70.94.064; and
- (4) Section 10, chapter 238, Laws of 1967, and RCW 70.94.066.

Such repeals shall not be construed as affecting any authority in existence on April 24, 1969, nor as affecting any action, activities or proceedings initiated by such authority prior hereto, nor as affecting any civil or criminal proceedings instituted by such authority, nor any rule, regulation, resolution, ordinance, or order promulgated by such authority, nor any administrative action taken by such authority, nor the term of office, or appointment or employment of any person appointed or employed by such authority. [1969 ex.s. c 168 § 46.]

70.94.911 Severability—1967 c 238. If any phrase, clause, subsection or section of this 1967 amendatory act shall be declared unconstitutional or invalid

by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1967 c 238 § 64.]

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

Chapter 70.95

SOLID WASTE MANAGEMENT—RECOVERY AND RECYCLING

Sections

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70.95.010 Legislative finding. The legislature finds:

(1) Continuing technological changes in methods of manufacture, packaging, and marketing of consumer products, together with the economic and population growth of this state, the rising affluence of its citizens, and its expanding industrial activity have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.

(2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs. [1975-'76 2nd ex.s. c 41 § 1; 1969 ex.s. c 134 § 1.]

70.95.020 Purpose. The purpose of this chapter is to establish a comprehensive state-wide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling;

(4) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(5) It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs. [1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2.]

70.95.030 Definitions. As used in this chapter, unless the context indicates otherwise:

(1) "City" means every incorporated city and town.

(2) "Committee" means the solid waste advisory committee.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology.

(5) "Disposal site" means the location where any final treatment, utilization, processing, or depository of solid waste occurs.

(6) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.

(7) "Jurisdictional health department" means city, county, city-county, or district public health department.

(8) "Person" means individual, firm, association, co-partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(9) "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities.

(10) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof. [1975-'76 2nd ex.s. c 41 § 3; 1970 ex.s. c 62 § 60; 1969 ex.s. c 134 § 3.]

Solid waste disposal, powers and duties of state board of health as to environmental contaminants: RCW 43.20.050.

70.95.040 Solid waste advisory committee—Created—Membership—Chairman—Meetings—Travel expenses. There is created a solid waste advisory committee to provide consultation to the department of ecology concerning matters covered by this chapter. The committee shall advise on the development of programs and regulations for solid waste handling and solid waste recovery and/or recycling, and shall supply recommendations concerning methods by which existing solid waste handling and solid waste recovery and/or recycling practices and the laws authorizing them may be supplemented and improved.

The committee shall consist of nine members, including the assistant director for the division of solid waste management within the department. The remaining eight members shall be appointed by the director with due regard to the interests of the public, local government, agriculture, industry, public health, and the refuse removal and resource recovery industries. The term of appointment shall be determined by the director. The committee shall elect its own chairman and meet at least four times a year, in accordance with such rules of procedure as it shall establish. Members shall receive no compensation for their services but shall be reimbursed their travel expenses while engaged in business of the committee in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1977 c 10 § 1. Prior: 1975-'76 2nd ex.s. c 41 § 9; 1975-'76 2nd ex.s. c 34 § 160; 1969 ex.s. c 134 § 4.]

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

70.95.050 Solid waste advisory committee—Staff services and facilities. The department shall furnish necessary staff services and facilities required by the solid waste advisory committee. [1969 ex.s. c 134 § 5.]

70.95.060 Standards for solid waste handling—Areas. The department in accordance with procedures prescribed by the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended, may adopt such minimum functional standards for solid waste handling as it deems appropriate. The department in adopting such standards may classify areas of the state with respect to population density, climate, geology, and other relevant factors bearing on solid waste disposal standards. [1969 ex.s. c 134 § 6.]

70.95.070 Review of standards prior to adoption—Revisions, additions and modifications—Factors. The solid waste advisory committee shall review prior to adoption and shall recommend revisions, additions, and modifications to the minimum functional standards governing solid waste handling relating, but not limited to, the following:

- (1) Vector production and sustenance.
- (2) Air pollution (coordinated with regulations of the department of ecology).
- (3) Pollution of surface and ground waters (coordinated with the regulations of the department of ecology).
- (4) Hazards to service or disposal workers or to the public.
- (5) Prevention of littering.
- (6) Adequacy and adaptability of disposal sites to population served.
- (7) Design and operation of disposal sites.
- (8) Recovery and/or recycling of solid waste. [1975-'76 2nd ex.s. c 41 § 4; 1969 ex.s. c 134 § 7.]

70.95.080 County comprehensive solid waste management plan—Joint plans—Duties of cities. Each county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties.

Each city shall:

- (1) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan; or
- (2) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or
- (3) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department shall take into account the probable cost of

such plans to the cities and counties. [1969 ex.s. c 134 § 8.]

70.95.090 Contents of each county and city solid waste management comprehensive plan. Each county and city solid waste management plan shall include the following:

- (1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.
- (2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.
- (3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:
 - (a) Meet the minimum functional standards for solid waste handling adopted by the department and all laws and regulations relating to air and water pollution, fire prevention, flood control, and protection of public health;
 - (b) Take into account the comprehensive land use plan of each jurisdiction;
 - (c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and
 - (d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.
- (4) A program for surveillance and control.
- (5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:

- (a) Any franchise for solid waste collection granted by the utilities and transportation commission in the respective jurisdictions including the name of the holder of the franchise and the address of his place of business and the area covered by his operation;
- (b) Any city solid waste operation within the county and the boundaries of such operation;
- (c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;
- (d) The projected solid waste collection needs for the respective jurisdictions for the next six years. [1971 ex.s. c 293 § 1; 1969 ex.s. c 134 § 9.]

Certain provisions not to detract from commission powers, duties and functions: RCW 80.01.300.

70.95.100 Submission of plans to department—Recommended revisions. Each comprehensive county solid waste management plan shall be submitted to the department for technical review and approval. The department may recommend revisions essential to the achievement of effective solid waste management and the purposes of this chapter. [1969 ex.s. c 134 § 10.]

70.95.110 Maintenance of plans—Review. The comprehensive county solid waste handling plans and any city solid waste handling plans prepared in accordance with RCW 70.95.080 shall be maintained in a current condition and reviewed and revised periodically by

counties and cities as may be required by the department of environmental quality. Upon each review such plans shall be extended to show long-range needs for solid waste handling facilities for twenty years in the future, and a revised construction and capital acquisition program for six years in the future. Each revised solid waste handling plan shall be submitted to the department of environmental quality. [1969 ex.s. c 134 § 11.]

70.95.120 Technical assistance. The department shall provide to counties and cities technical assistance in the preparation, review and revision of solid waste handling plans required by this chapter. [1969 ex.s. c 134 § 12.]

70.95.130 Financial aid to counties and cities. Any county may apply to the department on a form prescribed thereby for financial aid for the preparation of the comprehensive county plan for solid waste management required by RCW 70.95.080. Any city electing to prepare an independent city plan, a joint city plan, or a joint county-city plan for solid waste management for inclusion in the county comprehensive plan may apply for financial aid for such purpose through the county. Every city application for financial aid for planning shall be filed with the county auditor and shall be included as a part of the county's application for financial aid. Any city preparing an independent plan shall provide for disposal sites wholly within its jurisdiction.

The department shall allocate to the counties and cities applying for financial aid for planning, such funds as may be available pursuant to legislative appropriations or from any federal grants for such purpose.

The department shall determine priorities and allocate available funds among the counties and cities applying for aid according to criteria established by regulations of the department considering population, urban development, environmental effects of waste disposal, existing waste handling practices, and the local justification of their proposed expenditures. [1969 ex.s. c 134 § 13.]

70.95.140 Matching requirements. Counties and cities shall match their planning aid allocated by the director by an amount not less than twenty-five percent of the estimated cost of such planning. Any federal planning aid made directly to a county or city shall not be considered either a state or local contribution in determining local matching requirements. Counties and cities may meet their share of planning costs by cash and contributed services. [1969 ex.s. c 134 § 14.]

70.95.150 Contracts with counties to assure proper expenditures. Upon the allocation of planning funds as provided in RCW 70.95.130, the department shall enter into a contract with each county receiving a planning grant. The contract shall include such provisions as the director may deem necessary to assure the proper expenditure of such funds including allocations made to cities. The sum allocated to a county shall be paid to the treasurer of such county. [1969 ex.s. c 134 § 15.]

70.95.160 County, city or jurisdictional board of health regulations. Each county, or any city, or jurisdictional board of health shall adopt regulations or ordinances governing solid waste handling implementing the comprehensive solid waste management plan covering storage, collection, transportation, treatment, utilization, processing and final disposal including the issuance of permits. Such regulations or ordinances shall assure that solid waste storage and disposal facilities are located, maintained, and operated in a manner so as properly to protect the public health, prevent air and water pollution, and avoid the creation of nuisances. Such regulations or ordinances may be more stringent than the minimum functional standards adopted by the department. Regulations or ordinances adopted by counties, cities, or jurisdictional boards of health shall be filed with the department of environmental quality. [1969 ex.s. c 134 § 16.]

70.95.170 Permit for solid waste disposal site or facilities—Required. After approval of the comprehensive solid waste plan by the department no solid waste disposal site or disposal site facilities shall be maintained, established, substantially altered, expanded, or improved until the county, city, or other person operating such site has obtained a permit from the jurisdictional health department pursuant to the provisions of RCW 70.95.180. [1969 ex.s. c 134 § 17.]

70.95.180 Permit for solid waste disposal site or facilities—Applications, fee. (1) Applications for permits to operate new or existing solid waste disposal sites shall be on forms prescribed by the department of environmental quality and shall contain a description of the proposed and existing facilities and operations at the site, plans and specifications for any new or additional facilities to be constructed, and such other information as the jurisdictional health department may deem necessary in order to determine whether the site and solid waste disposal facilities located thereon will comply with local and state regulations.

(2) Upon receipt of an application for a permit to establish, alter, expand, improve, or continue in use a solid waste disposal site, the jurisdictional health department shall refer one copy of the application to the department of environmental quality which shall report its findings to the jurisdictional health department.

(3) The jurisdictional health department shall investigate every application as may be necessary to determine whether an existing or proposed site and facilities meet all applicable laws and regulations, and conforms with the approved comprehensive solid waste handling plan, and complies with all zoning requirements.

(4) When the jurisdictional health department finds that the permit should be issued, it shall issue such permit. Every application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department.

(5) The jurisdictional board of health may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department shall be deposited in the treasury and to the account from which

the health department's operating expenses are paid. [1969 ex.s. c 134 § 18.]

70.95.190 Permit for solid waste disposal site or facilities—Renewal. Every permit for a solid waste disposal site shall be renewed annually on a date to be established by the jurisdictional health department having jurisdiction of the site. Prior to renewing a permit, the health department shall conduct such inspections as it deems necessary to assure that the solid waste disposal site and facilities located on the site meet minimum functional standards of the department of environmental quality and applicable local regulations. [1969 ex.s. c 134 § 19.]

70.95.200 Permit for solid waste disposal site or facilities—Suspension. Any permit for a solid waste disposal site issued as provided herein shall be subject to suspension at any time the jurisdictional health department determines that the site or the solid waste disposal facilities located on the site are being operated in violation of this chapter, or the regulations of the department or local laws and regulations. [1969 ex.s. c 134 § 20.]

70.95.210 Hearing—Appeal. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given all interested parties including the county or city having jurisdiction over the site and the department of environmental quality. Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in writing of his determination and the reasons therefor. Any party aggrieved by such determination may appeal to the department of environmental quality by filing with the director a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The department shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended. [1969 ex.s. c 134 § 21.]

70.95.220 Financial aid to jurisdictional health departments—Applications—Allocations. Any jurisdictional health department may apply to the department for financial aid for the enforcement of rules and regulations promulgated under this chapter. Such application shall contain such information, including budget and program description, as may be prescribed by regulations of the department.

After receipt of such applications the department may allocate available funds according to criteria established by regulations of the department considering population, urban development, the number of the disposal sites, and geographical area.

The sum allocated to a jurisdictional health department shall be paid to the treasury from which the operating expenses of the health department are paid, and

shall be used exclusively for inspections and administrative expenses necessary to enforce applicable regulations. [1969 ex.s. c 134 § 22.]

70.95.230 Financial aid to jurisdictional health departments—Matching funds requirements. The jurisdictional health department applying for state assistance for the enforcement of this chapter shall match such aid allocated by the department in an amount not less than twenty-five percent of the total amount spent for such enforcement activity during the year. The local share of enforcement costs may be met by cash and contributed services. [1969 ex.s. c 134 § 23.]

70.95.240 Unlawful to dump or deposit solid waste without permit. After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit: *Provided*, That nothing herein shall prohibit a person from dumping or depositing solid waste resulting from his own activities onto or under the surface of ground owned or leased by him when such action does not violate statutes or ordinances, or create a nuisance. Any person violating this section shall be guilty of a misdemeanor. [1969 ex.s. c 134 § 24.]

70.95.250 Name appearing on waste material—Presumption. Whenever solid wastes dumped in violation of RCW 70.95.240 contain three or more items bearing the name of one individual, there shall be a rebuttable presumption that the individual whose name appears on such items committed the unlawful act of dumping. [1969 ex.s. c 134 § 25.]

70.95.260 Powers and duties of department. The department shall in addition to its other powers and duties:

(1) Cooperate with the appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the provisions of this chapter.

(2) Coordinate the development of a solid waste management plan for all areas of the state in cooperation with local government, the planning and community affairs agency or its successor, and other appropriate state and regional agencies. The plan shall relate to solid waste management for twenty years in the future and shall be reviewed biennially, revised as necessary, and extended so that perpetually the plan shall look to the future for twenty years as a guide in carrying out a state coordinated solid waste management program.

(3) Provide technical assistance to any person as well as to cities, counties, and industries.

(4) Initiate, conduct, and support research, demonstration projects, and investigations, and coordinate research programs pertaining to solid waste management systems.

(5) May, under the provisions of the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended, from time to time promulgate such rules and regulations as are necessary to carry out the purposes of this chapter. [1969 ex.s. c 134 § 26.]

70.95.263 Additional powers and duties of department. The department shall in addition to its other duties and powers under this chapter:

(1) Prepare the following:

(a) a management system for recycling waste paper generated by state offices and institutions in cooperation with such offices and institutions;

(b) an evaluation of existing and potential systems for recovery of energy and materials from solid waste with recommendations to affected governmental agencies as to those systems which would be the most appropriate for implementation;

(c) a data management system to evaluate and assist the progress of state and local jurisdictions and private industry in resource recovery;

(d) identification of potential markets, in cooperation with private industry, for recovered resources and the impact of the distribution of such resources on existing markets;

(e) studies on methods of transportation, collection, reduction, separation, and packaging which will encourage more efficient utilization of existing waste recovery facilities;

(f) recommendations on incentives, including state grants, loans, and other assistance, to local governments which will encourage the recovery and recycling of solid wastes.

(2) Provide technical information and assistance to state and local jurisdictions, the public, and private industry on solid waste recovery and/or recycling.

(3) Procure and expend funds available from federal agencies and other sources to assist the implementation by local governments of solid waste recovery and/or recycling programs, and projects.

(4) Conduct necessary research and studies to carry out the purposes of this chapter.

(5) Encourage and assist local governments and private industry to develop pilot solid waste recovery and/or recycling projects.

(6) Monitor, assist with research, and collect data for use in assessing feasibility for others to develop solid waste recovery and/or recycling projects.

(7) Make periodic recommendations to the governor and the legislature on actions and policies which would further implement the objectives of *this 1976 amendatory act. [1975-'76 2nd ex.s. c 41 § 5.]

***Reviser's note:** "this 1976 amendatory act" [1975-'76 2nd ex.s. c 41] consists of amendments to RCW 70.93.020, 70.93.190, 70.95.010, 70.95.020, 70.95.030, 70.95.040, 70.95.070, and to RCW 70.95.263, 70.95.265 and 70.95.267.

70.95.265 Department to cooperate with public and private departments, agencies and associations. The department shall work closely with the department of commerce and economic development, the department of general administration, and with other state departments

and agencies, the Washington state association of counties, the association of Washington cities, and business associations, to carry out the objectives and purposes of *this 1976 amendatory act. [1975-'76 2nd ex.s. c 41 § 6.]

***Reviser's note:** "this 1976 amendatory act", see note following RCW 70.95.263.

70.95.267 Department authorized to use referendum 26 (chapter 43.83A RCW) funds for dispersal to local governments. The department is authorized to use referendum 26 (chapter 43.83A RCW) funds of the Washington futures account to disburse to local governments in developing solid waste recovery and/or recycling projects. [1975-'76 2nd ex.s. c 41 § 10.]

70.95.900 Authority and responsibility of utilities and transportation commission not changed. Nothing in this act shall be deemed to change the authority or responsibility of the Washington utilities and transportation commission to regulate all intrastate carriers. [1969 ex.s. c 134 § 27.]

70.95.910 Severability—1969 ex.s. c 134. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1969 ex.s. c 134 § 28.]

70.95.911 Severability—1975-'76 2nd ex.s. c 41. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 41 § 11.]

Chapter 70.95A

POLLUTION CONTROL—MUNICIPAL BONDING AUTHORITY

Sections

70.95A.010	Legislative declaration—Liberal construction.
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70.95A.912	Construction—1975 c 6.
70.95A.920	Severability—1973 c 132.
70.95A.930	Acquisitions by port districts under RCW 53.08-.040—Prior rights or obligations.
70.95A.940	Severability—1975 c 6.

70.95A.010 Legislative declaration—Liberal construction. The legislature finds:

(1) That environmental damage seriously endangers the public health and welfare;

(2) That such environmental damage results from air, water, and other resources pollution and from solid waste disposal, noise and other environmental problems;

(3) That to abate or control such environmental damage antipollution devices, equipment, and facilities must be acquired, constructed and installed;

(4) That the tax exempt financing permitted by Section 103 of the Internal Revenue Code of 1954, as amended, and authorized by this chapter results in lower costs of installation of pollution control facilities;

(5) That such lower costs benefit the public with no measurable cost impact;

(6) That the method of financing provided in this chapter is in the public interest and its use serves a public purpose in (a) protecting and promoting the health and welfare of the citizens of the cities, towns, counties, and port districts and of this state by encouraging and accelerating the installation of facilities for abating or controlling and preventing environmental damage and (b) in attracting and retaining environmentally sound industry in this state which reduces unemployment and provides a more diversified tax base.

(7) For the reasons set forth in subsection (6) of this section, the provisions of this chapter relating to port districts and all proceedings heretofore or hereafter taken by port districts pursuant thereto are, and shall be deemed to be, for industrial development as authorized by Article 8, section 8 of the Washington state Constitution.

This chapter shall be liberally construed to accomplish the intentions expressed in this section. [1975 c 6 § 1; 1973 c 132 § 2.]

70.95A.020 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Municipality" shall mean any city, town, county, or port district in the state;

(2) "Facility" or "facilities" shall mean any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof, or any interest therein, and all real and personal properties deemed necessary in connection therewith whether or not now in existence, which is used or to be used by any person, corporation or municipality in furtherance of the purpose of abating, controlling or preventing pollution;

(3) "Pollution" shall mean any form of environmental pollution, including but not limited to water pollution, air pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution;

(4) "Governing body" shall mean the body or bodies in which the legislative powers of the municipality are vested;

(5) "Mortgage" shall mean a mortgage or a mortgage and deed of trust or other security device; and

(6) "Department" shall mean the state department of ecology. [1973 c 132 § 3.]

70.95A.030 Municipalities—Powers. In addition to any other powers which it may now have, each municipality shall have the following powers:

(1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more facilities which shall be located within, or partially within the municipality;

(2) To lease, lease with option to purchase, sell or sell by installment sale, any or all of the facilities upon such terms and conditions as the governing body may deem advisable but which shall at least fully reimburse the municipality for all debt service on any bonds issued to finance the facilities and for all costs incurred by the municipality in financing and operating the facilities and as shall not conflict with the provisions of this chapter;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any facility or facilities or refunding any bonds issued for such purpose and to secure the payment of such bonds as provided in this chapter. Revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may have the same or different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on security available for assuring payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this chapter. [1973 c 132 § 4.]

70.95A.035 Actions by municipalities validated. All actions heretofore taken by any municipality in conformity with the provisions of this chapter and the provisions of *this 1975 amendatory act hereby made applicable thereto relating to pollution control facilities, including but not limited to all bonds issued for such purposes, are hereby declared to be valid, legal and binding in all respects. [1975 c 6 § 4.]

**Reviser's note: "this 1975 amendatory act" [1975 c 6] consists of amendments to RCW 70.95A.010 and 70.95A.040 and the enactment of RCW 53.08.040, 70.95A.035, 70.95A.045, 70.95A.912, 70.95A.940, and an uncodified section declaring an emergency and providing an effective date.*

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.040 Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms. (1) All bonds issued by a municipality under the authority of this chapter shall be secured solely by revenues derived from the lease or sale of the facility. Bonds and interest coupons issued under the authority of this chapter shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds. The use of the municipality's name on revenue bonds authorized hereunder shall not be construed to be the giving or lending of the municipality's financial guarantee or pledge, i.e. credit to any private person, firm, or corporation as the term credit is used in Article 8, section 7 of the Washington state Constitution.

(2) The bonds referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in registered or bearer form either as to principal or interest or both, and may provide for conversion between registered and coupon bonds of varying denominations, (e) be payable in such installments and at such time or times not exceeding forty years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates as may be determined by the governing body, payable at such place or places within or without this state and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds issued under the authority of this chapter, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the facilities.

(4) All bonds issued under the authority of this chapter, and all interest coupons applicable thereto shall be investment securities within the meaning of the uniform commercial code and shall be deemed to be issued by a political subdivision of the state.

(5) The proceeds from any bonds issued under this chapter shall be used only for purposes qualifying under Section 103(c)(4)(f) of the Internal Revenue Code of 1954, as amended. [1975 c 6 § 3; 1973 c 132 § 5.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.045 Proceeds of bonds are separate trust funds—Municipal treasurer, compensation. The proceeds of any bonds heretofore or hereafter issued in conformity with the authority of this chapter, together with interest and premiums thereon, and any revenues used to pay or redeem any of such bonds, together with interest and any premiums thereon, shall be separate trust funds and used only for the purposes permitted herein and shall not be considered to be money of the municipality. The services of the treasurer of a municipality, if such treasurer is or has been used, were and are intended to be for the administrative convenience of receipt and payment of nonpublic moneys only for which reasonable compensation may be charged by such treasurer or municipality. [1975 c 6 § 2.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.050 Revenue bonds—Security—Scope—Default—Authorization proceedings. (1) The principal of and interest on any bonds issued under the authority of this chapter (a) shall be secured by a

pledge of the revenues derived from the sale or lease of the facilities out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the facilities, (c) may be secured by a pledge or assignment of the lease of such facilities, or (d) may be secured by a trust agreement or such other security device as may be deemed most advantageous by the governing body.

(2) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any facilities covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such facilities, (c) the maintenance and insurance of such facilities, (d) the creation and maintenance of special funds from the revenues of such facilities, and (e) the rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage or trust agreement, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this chapter: *Provided*, That in making any such agreements or provisions a municipality shall not have the power to obligate itself except with respect to the facilities and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the facilities in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage made under the provisions of this chapter, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the mortgaged property sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon their general credit or against their taxing powers.

(5) The proceedings authorizing the issuance of bonds hereunder may provide for the appointment of a trustee or trustees for the protection of the holders of the bonds, whether or not a mortgage is entered into as security for such bonds. Any such trustee may be a bank with trust powers or a trust company and shall be located in the United States, within or without the state of

Washington, shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank (including the trustee) which are continuously secured by such obligations of or guaranteed by the United States. Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued hereunder to the same extent as if it were not such trustee. Said proceedings may provide for one or more co-trustees, and any co-trustee may be any competent individual over the age of twenty-one years or a bank having trust powers or trust company within or without the state. The proceedings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, of any insurance policy or of any condemnation award be deposited with the trustee or a co-trustee and applied as provided in said proceedings. [1973 c 132 § 6.]

70.95A.060 Facilities—Leases authorized. Prior to the issuance of the bonds authorized by this chapter, the municipality may lease the facilities to a lessee or lessees under an agreement providing for payment to the municipality of such rentals as will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the facilities, (b) to pay the taxes on the facilities, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the facilities, to pay the costs of maintaining the facilities in good repair and keeping the same properly insured. Subject to the limitations of this chapter, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities, such lease may contain an option for the lessees to purchase the facilities on such terms and conditions with or without consideration as may be mutually acceptable to the parties. [1973 c 132 § 7.]

70.95A.070 Facilities—Revenue bonds—Refunding provisions. Any bonds issued under the provisions of this chapter and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith: *Provided*, That an issue of refunding bonds may be combined with an issue of additional revenue bonds on any facilities. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the

refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: *Provided further*, That the holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange except on the terms expressed on the face thereof. Any refunding bonds issued under the authority of this chapter shall be subject to the provisions contained in RCW 70.95A.040 and may be secured in accordance with the provisions of RCW 70.95A.050. [1973 c 132 § 8.]

70.95A.080 Revenue bonds—Disposition of proceeds. The proceeds from the sale of any bonds issued under authority of this chapter shall be applied only for the purpose for which the bonds were issued: *Provided*, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: *And provided further*, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any facilities shall be deemed to include the following: The actual cost of acquiring or improving real estate for any facilities; the actual cost of construction of all or any part of the facilities which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvements; and the interest on such bonds for a reasonable time prior to construction, during construction, and for a time not exceeding six months after completion of construction. [1973 c 132 § 9.]

70.95A.090 Facilities—Sale or lease—Certain restrictions on municipalities not applicable. The facilities shall be constructed, reconstructed, and improved and shall be leased, sold or otherwise disposed of in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of a municipality is not applicable to any action taken under authority of this chapter. [1973 c 132 § 10.]

70.95A.100 Facilities—Department of ecology certification. Upon request by a municipality or by a user of the facilities the department of ecology may in relation to chapter 54, Laws of 1972 ex. sess. and this chapter issue its certificate stating that the facilities (1) as designed are in furtherance of the purpose of abating, controlling or preventing pollution, and/or (2) as designed or as operated meet state and local requirements for the control of pollution. This section shall not be construed as modifying the provisions of RCW 82.34-.030; chapter 70.94 RCW; or chapter 90.48 RCW. [1973 c 132 § 11.]

70.95A.910 Construction—1973 c 132. Nothing in this chapter shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative. [1973 c 132 § 12.]

70.95A.912 Construction—1975 c 6. *This 1975 amendatory act shall be liberally construed to accomplish the intention expressed herein. [1975 c 6 § 6.]

***Reviser's note:** "This 1975 amendatory act" [1975 c 6] see note following RCW 70.95A.035.

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.920 Severability—1973 c 132. If any provision of this 1973 act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this 1973 act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1973 c 132 § 13.]

70.95A.930 Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations. All acquisitions by port districts pursuant to RCW 53.08.040 may, at the option of a port commission, be deemed to be made under this chapter, or under both: *Provided*, That nothing contained in this chapter shall impair rights or obligations under contracts entered into before March 19, 1973. [1973 c 132 § 14.]

70.95A.940 Severability—1975 c 6. If any provision of *this 1975 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of *this 1975 amendatory act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1975 c 6 § 7.]

***Reviser's note:** "this 1975 amendatory act" [1975 c 6] see note following RCW 70.95A.035.

Chapter 70.95B

DOMESTIC WASTE TREATMENT PLANTS— CERTIFICATION AND REGULATION OF OPERATORS

Sections

70.95B.010	Legislative declaration.
70.95B.020	Definitions.
70.95B.030	Waste treatment plant operators—Certification required.
70.95B.040	Administration of chapter—Rules and regulations—Director's duties.
70.95B.050	Waste treatment plants—Classification.
70.95B.060	Criteria and guidelines.
70.95B.070	Board of examiners for wastewater operator certification—Created—Members—Qualifications—Terms—Powers and duties—Travel expenses.
70.95B.080	Certificates—When examination not required.
70.95B.090	Certificates—Issuance and renewal conditions.
70.95B.100	Certificates—Revocation procedures.
70.95B.110	Administration of chapter—Powers and duties of director.

70.95B.120	Violations.
70.95B.130	Certificates—Reciprocity with other states.
70.95B.140	Penalties for violations—Injunctions.
70.95B.150	Administration of chapter—Receipts—Payment to general fund.
70.95B.900	Effective date—1973 c 139.

Reviser's note: Chapter 139, Laws of 1973 has been codified as chapter 70.95B RCW which appears to be in accordance with code organization. Section 16 of chapter 139 had directed that the chapter be added to Title 43 RCW. For other laws pertaining to environmental protection and pollution control, see chapters 70.93, 70.94, 70.95, 70.95A, and 90.48 RCW.

Public water supply systems—Certification and regulation of operators: Chapter 70.119 RCW.

70.95B.010 Legislative declaration. The legislature declares that competent operation of waste treatment plants plays an important part in the protection of the environment of the state and therefore it is of vital interest to the public. In order to protect the public health and to conserve and protect the water resources of the state, it is necessary to provide for the classifying of all domestic wastewater treatment plants; to require the examination and certification of the persons responsible for the supervision and operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1973 c 139 § 1.]

70.95B.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Director" means the director of the department of ecology.

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

(3) "Board" means the water and wastewater operator certification board of examiners established by RCW 70.95B.070.

(4) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(5) "Waste treatment plant" means a facility used in the collection, transmission, storage, pumping, treatment or discharge of any liquid or waterborne waste, whether of domestic origin or a combination of domestic, commercial or industrial waste, and which by its design requires the presence of an operator for its operation. It shall not include any facility used exclusively by a single family residence nor septic tanks with subsoil absorption nor industrial wastewater works.

(6) "Operator" means an individual employed or appointed by any county, sewer district, municipality, public or private corporation, company, institution, person, or the state of Washington who is designated by the employing or appointing officials as the person on-site in responsible charge of the actual operation of a waste treatment plant.

(7) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between state programs

and assists authorities in establishing new certification programs and updating existing ones. [1973 c 139 § 2.]

70.95B.030 Waste treatment plant operators—Certification required. As provided for in this chapter, the operator in responsible charge of the day-to-day operation of a waste treatment plant shall be certified. When a waste treatment plant is normally operated for more than one shift, the man responsible for each shift operation shall also be certified. Operating personnel not required to be certified by this chapter are encouraged to become certified hereunder on a voluntary basis. [1973 c 139 § 3.]

70.95B.040 Administration of chapter—Rules and regulations—Director's duties. The director, with the approval of the board, shall adopt and enforce such rules and regulations as may be necessary for the administration of this chapter. The rules and regulations shall include, but not be limited to, provisions for the qualification and certification of operators for different classifications of waste treatment plants. [1973 c 139 § 4.]

70.95B.050 Waste treatment plants—Classification. The director shall classify all waste treatment plants with regard to the size, type, and other conditions affecting the complexity of such treatment plants and the skill, knowledge, and experience required of an operator to supervise the operation of such facilities to protect the public health and the state's water resources. [1973 c 139 § 5.]

70.95B.060 Criteria and guidelines. The director is authorized when taking action pursuant to RCW 70.95B.040 and 70.95B.050 to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1973 c 139 § 6.]

70.95B.070 Board of examiners for wastewater operator certification—Created—Members—Qualifications—Terms—Powers and duties—Travel expenses. For the purpose of carrying out the provisions of this chapter, a board of examiners for wastewater operator certification shall be appointed. This board may serve in a common capacity for the certification of both water and wastewater plant and system operators. One member shall be named from the department of ecology, by its director to serve at his pleasure, and one member from the department of social and health services by its secretary, to serve at his pleasure, and one member who is required to employ a certified operator and who holds the position of city manager, city engineer, director of public works, superintendent of utilities, or an equivalent position who will be appointed by the governor. The governor shall also appoint two members who are operators holding a certificate of at least the second highest operator classification for wastewater plant operators established by regulation of the director, and if authorized in a water supply system operator certification act, two members who are operators holding a certificate of at

least the second highest classification for waterworks operators established pursuant to such act.

The employer representative shall be appointed for an initial one-year term and the operators for initial terms of two and three years respectively. Thereafter, the members appointed by the governor shall serve for a three-year period. Vacancies shall be filled for the remainder for an unexpired term by the appointing authorities.

This board shall assist in the development of rules and regulations, shall prepare, administer and evaluate examinations of operator competency as required in this chapter, and shall recommend the issuance or revocation of certificates. The board shall determine when and where the examinations shall be held. The examination shall be held at least three times annually.

Each member appointed by the governor shall serve without compensation, but shall be reimbursed for travel expenses while engaged in the business of the board as prescribed in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 161; 1973 c 139 § 7.]

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

Water and wastewater operator certification board of examiners—Additional members—Additional powers and duties: RCW 70.119.080.

70.95B.080 Certificates—When examination not required. Certificates shall be issued without examination under the following conditions:

(1) Certificates, in appropriate classifications, shall be issued without application fee to operators who, on July 1, 1973, hold certificates of competency attained by examination under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest pollution control association.

(2) Certificates, in appropriate classifications, shall be issued to persons certified by a governing body or owner to have been the operator in responsible charge of a waste treatment plant on July 1, 1973. A certificate so issued will be valid only for the existing plant.

(3) A nonrenewable certificate, temporary in nature, may be issued for a period not to exceed twelve months, to an operator to fill a vacated position required to have a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1973 c 139 § 8.]

70.95B.090 Certificates—Issuance and renewal conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) A certificate shall be issued if the operator has satisfactorily passed a written examination, or has met the requirements of RCW 70.95B.080, and has met the requirements specified in the rules and regulations as authorized by this chapter, and has paid the department an application fee of ten dollars.

(2) The term for all certificates shall be from the first of January of the year of issuance until the thirty-first of December of the same year. Every certificate shall be

renewed annually upon the payment of a five dollar renewal fee and satisfactory evidence presented to the director that the operator demonstrates continued professional growth in the field.

(3) An individual who fails to renew the certificate before the end of certification year, upon notice by the director shall have his certificate suspended for thirty days. If, during the suspension period, the renewal is not completed, the director shall give notice of revocation to the employer and to the operator and the certificate will be revoked ten days after such notice is given. An operator whose certificate has been revoked must reapply for certification and will be requested to meet the requirements of a new applicant. [1973 c 139 § 9.]

70.95B.100 Certificates—Revocation procedures. The director may, with the recommendation of the board and after a hearing before the same, revoke a certificate found to have been obtained by fraud or deceit, or for gross negligence in the operation of a waste treatment plant, or for violating the requirements of this chapter or any lawful rule, order or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of this final order or revocation. [1973 c 139 § 10.]

70.95B.110 Administration of chapter—Powers and duties of director. To carry out the provisions and purposes of this chapter, the director is authorized and empowered to:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as he deems appropriate with other state, federal, or interstate agencies, municipalities, education institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government and other public or private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, education institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out the provisions of this chapter. [1973 c 139 § 11.]

70.95B.120 Violations. On and after one year following July 1, 1973, it shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a waste treatment plant unless the operator of the plant or system is duly certified by the director under the provisions of this chapter or any lawful rule, order, or regulation of the department. It shall also be unlawful for any person to perform the duties of an operator as defined in this

chapter, or in any lawful rule, order, or regulation of the department, without being duly certified under the provisions of this chapter. [1973 c 139 § 12.]

70.95B.130 Certificates—Reciprocity with other states. On or after July 1, 1973, certification of operators by any state which, as determined by the director, accepts certifications made or certification requirements deemed satisfied pursuant to the provisions of this chapter, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this chapter, if in the judgment of the director the certification requirements of such state are substantially equivalent to the requirements of this chapter or any rules or regulations promulgated hereunder.

In making determinations pursuant to this section, the director shall consult with the board and may consider any generally applicable criteria and guidelines developed by the nationally recognized association of certification authorities. [1973 c 139 § 13.]

70.95B.140 Penalties for violations—Injunctions. Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency violating any provisions of this chapter or the rules and regulations adopted hereunder, is guilty of a misdemeanor. Each day of operation in such violation of this chapter or any rules or regulations adopted hereunder shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate, to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereunder. [1973 c 139 § 14.]

70.95B.150 Administration of chapter—Receipts—Payment to general fund. All receipts realized in the administration of this chapter shall be paid into the general fund. [1973 c 139 § 15.]

70.95B.900 Effective date—1973 c 139. This 1973 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973. [1973 c 139 § 17.]

Chapter 70.96 ALCOHOLISM

Sections	
70.96.085	Powers and duties of department—Assistance in development and operation of public or private facilities.
70.96.092	Approval of facilities, plans or programs prerequisite to receiving state financial assistance.
70.96.094	Approval of facilities, plans or programs prerequisite to receiving state financial assistance—Financial support from other sources required before state approval given.
70.96.095	Cities and counties—Sharing in use of facilities or programs maintained by other city or county.
70.96.096	Cities and counties—Eligibility for liquor taxes and profits—Support of alcoholism program required.

70.96.150 Inability to contribute to cost no bar to admission.
 70.96.160 County alcoholism administrative board—Members—Qualifications—Terms—Powers, duties—Executive director.

Alcoholism treatment benefit provisions
group disability contracts: RCW 48.21.160–48.21.190.
health care services contracts: RCW 48.44.240.

70.96.085 Powers and duties of department—Assistance in development and operation of public or private facilities. The department of social and health services is authorized to provide financial assistance and consultative services to assist in the development, establishment, construction, maintenance, and operation of community, public, or private nonprofit facilities throughout the state for the referral, care, custody, treatment, recovery and rehabilitation of alcoholics. [1979 c 141 § 124; 1965 ex.s. c 143 § 1.]

Liquor revolving fund, disbursement to universities and department of social and health services: RCW 66.08.180.

70.96.092 Approval of facilities, plans or programs prerequisite to receiving state financial assistance. All facilities, plans, or programs receiving financial assistance under RCW 70.96.085 shall be approved by the department of social and health services before any state funds are used to provide such financial assistance. Whenever such facilities, plans, or programs have not been approved as required or do not receive the required approval, the funds set aside for such facility, plan, or program shall be made available for allocation to facilities, plans, or programs which have received the required approval of the department. In addition, whenever there is an excess of funds set aside for a particular approved facility, plan or program, the excess shall be made available for allocation to other approved facilities, plans, or programs. [1971 ex.s. c 104 § 1.]

70.96.094 Approval of facilities, plans or programs prerequisite to receiving state financial assistance—Financial support from other sources required before state approval given. Except as hereinafter provided, the secretary of social and health services shall not approve any facility, plan, or program for financial assistance under RCW 70.96.085 unless at least ten percent of the amount expended for such facility, plan or program is provided from local public or private sources. When deemed necessary to maintain public standards of care in the facility, plan, or program, the secretary may require such facility, plan, or program to provide up to fifty percent of the total expended for such program through fees, gifts, contributions or volunteer services, the value of such gifts, contributions and volunteer services to be determined by the secretary. [1971 ex.s. c 104 § 2.]

70.96.095 Cities and counties—Sharing in use of facilities or programs maintained by other city or county. Any city, town or county not having its own facility or program for the treatment and rehabilitation of alcoholics may share in the use of a facility or program maintained by another city or county so long as it contributes

no less than two percent of its share of liquor taxes and profits to the support of the same. [1972 ex.s. c 77 § 1.]

70.96.096 Cities and counties—Eligibility for liquor taxes and profits—Support of alcoholism program required. In order to be eligible to receive its share of liquor taxes and profits, each city and county shall be required to devote no less than two percent of such share of liquor taxes and profits to the support of an alcoholism program approved by the alcoholism administrative board authorized by RCW 70.96.160 and the secretary of the state department of social and health services. [1973 1st ex.s. c 155 § 3; 1972 ex.s. c 77 § 2.]

Liquor revolving fund disbursements: RCW 66.08.180.

70.96.150 Inability to contribute to cost no bar to admission. The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism. [1959 c 85 § 15.]

70.96.160 County alcoholism administrative board—Members—Qualifications—Terms—Powers, duties—Executive director. Any county or combination of counties acting jointly by agreement, hereinafter referred to as "county", may create an alcoholism administrative board. Such board shall be composed of not less than seven nor more than fifteen members, who shall be representative of the community, shall include at least two recovered alcoholics, and shall include consumer and minority group representation. No more than four elected or appointed city or county officials may serve on such board at the same time. Members of the board shall serve three year terms and until their successors are appointed and qualified. They shall not be compensated for the performance of their duties as members of the board, but may be paid subsistence rates and mileage in the amounts prescribed by *RCW 36.17.030 as now or hereafter amended.

The alcoholism administrative board, the county and the department of social and health services shall, in the area of alcoholism prevention, treatment and education, and the administration, planning and funding thereof, have the same duties, responsibilities, powers, liabilities and authorities as are provided by chapter 71.24 RCW with respect to the mental health administrative board, the county and the department of social and health services.

An executive director of the board may be appointed by the county commissioners subject to the approval of the board. Applicants for such position need not be residents of the county, city or state, and may be employed on a full or part time basis. [1973 1st ex.s. c 155 § 2.]

*Reviser's note: RCW 36.17.030 was repealed by 1974 ex.s. c 24 § 1.

Chapter 70.96A
UNIFORM ALCOHOLISM AND INTOXICATION
TREATMENT

Sections

70.96A.010	Declaration of policy.
70.96A.020	Definitions.
70.96A.030	Alcoholism program.
70.96A.040	Program authority.
70.96A.050	Duties of department.
70.96A.060	Interdepartmental coordinating committee.
70.96A.070	Citizens advisory council—Qualifications— Duties.
70.96A.080	Comprehensive program for treatment—Regional facilities.
70.96A.090	Standards for public and private treatment faci- ties—Enforcement procedures—Penalties.
70.96A.100	Acceptance for treatment—Rules.
70.96A.110	Voluntary treatment of alcoholics.
70.96A.120	Treatment and services for intoxicated persons and persons incapacitated by alcohol.
70.96A.140	Involuntary commitment of alcoholics.
70.96A.150	Records of alcoholics and intoxicated persons.
70.96A.160	Visitation and communication with patients.
70.96A.170	Emergency service patrol—Establishment— Rules.
70.96A.180	Payment for treatment—Financial ability of patients.
70.96A.190	Criminal laws limitations.
70.96A.200	Transfer of property and funds to department of so- cial and health services.
70.96A.210	Transfer of appropriations.
70.96A.220	Duties of director of financial management regarding transfer of equipment, funds and appropriations.
70.96A.900	Short title.
70.96A.910	Application and construction.
70.96A.920	Severability—1972 ex.s. c 122.
70.96A.930	Section, subsection headings not part of law.

Reviser's note: Throughout this chapter "this act" has been translated to "this chapter". This act [1972 ex.s. c 122] consists of chapter 70.96A RCW, the amendment of RCW 9.87.010, 71.24.030 and the repeal of RCW 9.68.040, 70.96.010–70.96.030, 70.96.040–70.96.080, 70.96.090, 70.96.100–70.96.140, 70.96.900, and 71.08.010–71.08.090.

70.96A.010 Declaration of policy. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. [1972 ex.s. c 122 § 1.]

Effective date—1972 ex.s. c 122. "Chapter 122, Laws of 1972 extraordinary session shall be effective January 1, 1975." [1973 c 92 § 1; 1972 ex.s. c 122 § 31.] This applies to chapter 70.96A RCW, to the amendment of RCW 9.87.010 and 71.24.030, and to the repeal of RCW 9.68.040, 70.96.010–70.96.030, 70.96.040–70.96.080, 70.96.090, 70.96.100–70.96.140, 70.96.900, and 71.08.010–71.08.090.

Progress report: "The department of social and health services shall make and deliver a written progress report on the implementation of the uniform alcoholism and intoxication treatment act every ninety days up to the effective date of the act, January 1, 1975 to the appropriate committee of the legislative council, or its successor." [1973 c 92 § 2.]

Alcoholism treatment benefit provisions

group disability contracts: RCW 48.21.160–48.21.190.
health care services contracts: RCW 48.44.240.

70.96A.020 Definitions. For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;

(2) "Approved treatment facility" means a treatment agency operating under the direction and control of the department of social and health services or providing treatment under this chapter through a contract with the department under RCW 70.96A.080(6) and meeting the standards prescribed in RCW 70.96A.090(1) and approved under RCW 70.96A.090(3);

(3) "Secretary" means the secretary of the department of social and health services;

(4) "Department" means the department of social and health services;

(5) "Director" means the director of the division of alcoholism;

(6) "Emergency service patrol" means a patrol established under RCW 70.96A.170;

(7) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, has his judgment so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment and constitutes a danger to himself, to any other person, or to property;

(8) "Incompetent person" means a person who has been adjudged incompetent by the superior court;

(9) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(10) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient and emergency services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics, persons incapacitated by alcohol, and intoxicated persons. [1972 ex.s. c 122 § 2.]

70.96A.030 Alcoholism program. A discrete program of alcoholism is established within the department of social and health services, to be administered by a qualified person who has training and experience in handling alcoholism problems or the organization or administration of treatment services for persons suffering from alcoholism problems. [1972 ex.s. c 122 § 3.]

70.96A.040 Program authority. The department, in the operation of the alcoholism program may:

(1) Plan, establish, and maintain treatment programs as necessary or desirable;

(2) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics, persons incapacitated by alcohol, or intoxicated persons;

(3) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or

any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(4) Administer or supervise the administration of the provisions relating to alcoholics and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(5) Coordinate its activities and cooperate with alcoholism programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons and for the common advancement of alcoholism programs;

(6) Keep records and engage in research and the gathering of relevant statistics;

(7) Do other acts and things necessary or convenient to execute the authority expressly granted to it; and

(8) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide treatment facilities for alcoholics, persons incapacitated by alcohol, and intoxicated persons. [1972 ex.s. c 122 § 4.]

70.96A.050 Duties of department. The department shall:

(1) Develop, encourage, and foster state-wide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons;

(3) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for alcoholics, persons incapacitated by alcohol, and intoxicated persons who are clients of the correctional system.

(4) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(5) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol;

(6) Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol;

(7) Organize and foster training programs for persons engaged in treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons;

(8) Sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons, and serve as a clearing house for information relating to alcoholism;

(9) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) Advise the governor in the preparation of a comprehensive plan for treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism, persons incapacitated by alcohol, and intoxicated persons;

(12) Assist in the development of, and cooperate with, alcohol education and treatment programs for employees of state and local governments and businesses and industries in the state;

(13) Utilize the support and assistance of interested persons in the community to encourage alcoholics voluntarily to undergo treatment;

(14) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics, persons incapacitated by alcohol, and intoxicated persons and to provide them with adequate and appropriate treatment;

(16) Encourage all health and disability insurance programs to include alcoholism as a covered illness; and

(17) Organize and sponsor a state-wide program to help court personnel, including judges, better understand the disease of alcoholism and the uses of alcoholism treatment programs. [1979 1st ex.s. c 176 § 7; 1972 ex.s. c 122 § 5.]

Severability—1979 1st ex.s. c 176: See note following RCW 46.61.502.

70.96A.060 Interdepartmental coordinating committee. (1) An interdepartmental coordinating committee is established, composed of the superintendent of public instruction or his designee, the director of licensing or his designee, the executive secretary of the Washington state law enforcement training commission or his designee, and one or more designees (not to exceed three) of the secretary of the department of social and health services. The committee shall meet at least twice annually at the call of the secretary, or his designee, who shall be its chairman. The committee shall provide for the coordination of, and exchange of information on, all programs relating to alcoholism, and shall act as a

permanent liaison among the departments engaged in activities affecting alcoholics, persons incapacitated by alcohol, and intoxicated persons. The committee shall assist the secretary and director in formulating a comprehensive plan for prevention of alcoholism and for treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons.

(2) In exercising its coordinating functions, the committee shall assure that:

(a) The appropriate state agencies provide or assure all necessary medical, social, treatment, and educational services for alcoholics, persons incapacitated by alcohol, and intoxicated persons and for the prevention of alcoholism, without unnecessary duplication of services;

(b) The several state agencies cooperate in the use of facilities and in the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons; and

(c) All state agencies adopt approaches to the prevention of alcoholism and the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons consistent with the policy of this chapter. [1979 c 158 § 220; 1972 ex.s. c 122 § 6.]

70.96A.070 Citizens advisory council—Qualifications—Duties. Pursuant to the provisions of RCW 43.20A.360, there shall be a citizens advisory council composed of not less than seven nor more than fifteen members, at least two of whom shall be recovered alcoholics and two of whom shall be members of recognized organizations involved with problems of alcoholism. The remaining members shall be broadly representative of the community, shall include representation from business and industry, organized labor, the judiciary, and minority groups, chosen for their demonstrated concern with alcoholism problems. Members shall be appointed by the secretary. In addition to advising the department in carrying out the purposes of this chapter, the council shall develop and propose to the secretary for his consideration the rules and regulations for the implementation of the alcoholism programs of the department. The secretary shall thereafter adopt such rules and regulations as shall, in his judgment properly implement the alcoholism programs of the department consistent with the welfare of those to be served, the legislative intent and the public good. [1973 1st ex.s. c 155 § 1; 1972 ex.s. c 122 § 7.]

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

70.96A.080 Comprehensive program for treatment—Regional facilities. (1) The department shall establish by all appropriate means, including contracting for services, a comprehensive and coordinated program for the treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons.

(2) The program shall include, but not necessarily be limited to:

(a) Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital or licensed medical institution:

(b) Inpatient treatment;

(c) Intermediate treatment; and

(d) Outpatient and follow-up treatment.

(3) The department shall provide for adequate and appropriate treatment for alcoholics, persons incapacitated by alcohol, and intoxicated persons admitted under RCW 70.96A.110 through 70.96A.140. Treatment may not be provided at a jail or prison except for inmates.

(4) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

(6) The department may contract for the use of any facility as an approved public treatment facility if the secretary, subject to the policies of the department, considers this to be an effective and economical course to follow. [1972 ex.s. c 122 § 8.]

70.96A.090 Standards for public and private treatment facilities—Enforcement procedures—Penalties. (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, and fix the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department periodically shall inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The department shall maintain a list of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment facilities, and its approval revoked or suspended.

(5) The division, after holding a hearing, may suspend, revoke, limit, or restrict an approval, or without hearing, refuse to grant an approval, for failure to meet the provisions of this chapter, or the standards established thereunder.

(6) The superior court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(7) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter. [1972 ex.s. c 122 § 9.]

70.96A.100 Acceptance for treatment—Rules. The secretary shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, persons incapacitated by alcohol, and intoxicated persons. In establishing the rules, the secretary shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment. [1972 ex.s. c 122 § 10.]

70.96A.110 Voluntary treatment of alcoholics. (1) An alcoholic may apply for voluntary treatment directly to an approved treatment facility. If the proposed patient is a minor or an incompetent person, he, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the secretary, the administrator in charge of an approved treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved treatment facility, the administrator, subject to rules adopted by the secretary, shall refer the person to another approved treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator in charge of the treatment facility that the patient is an alcoholic who requires help, the department may arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator in charge of the facility, the department may make reasonable provisions for his transportation to another facility or to his home. If he has no home he should be assisted in obtaining shelter. If he is less than fourteen years of age or an incompetent person the request for discharge from an inpatient facility shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he was the original applicant. [1972 ex.s. c 122 § 11.]

70.96A.120 Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person may come voluntarily to an approved

treatment facility for treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved treatment facility or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism or intoxication and except for a person who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while intoxicated and except for a person who may wish to avail himself of the provisions of RCW 46.20.308, a person who appears to be incapacitated by alcohol and who is in a public place or who has threatened, attempted, or inflicted physical harm on another, shall be taken into protective custody by the police or the emergency service patrol and as soon as practicable, but in no event beyond eight hours brought to an approved treatment facility for treatment. If no approved treatment facility is readily available he shall be taken to an emergency medical service customarily used for incapacitated persons. The police or the emergency service patrol, in detaining the person and in taking him to an approved treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer or member of an emergency patrol may take reasonable steps including reasonable force if necessary to protect himself or effect the custody. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved treatment facility shall be examined by a qualified person. He may then be admitted as a patient or referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment facility shall arrange for his transportation.

(4) A person who is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may not be detained at the facility (a) once he is no longer incapacitated by alcohol, and (b) if he remains incapacitated by alcohol for more than forty-eight hours after admission as a patient, unless a petition is filed under RCW 70.96A.140, as now or hereafter amended: *Provided*, That the treatment personnel at the facility are authorized to use such reasonable physical restraint as may be necessary to retain a person incapacitated by alcohol at such facility for up to forty-eight hours from the time of admission. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment facility, is not referred to another health facility, and has no funds, may be taken to his home, if any. If he has no home, the approved treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved treatment facility, his family or next of kin shall be notified as

promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

(7) The police, members of the emergency service, or treatment facility personnel, who in good faith act in compliance with this chapter are performing in the course of their official duty and are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment. [1977 ex.s. c 62 § 1; 1974 ex.s. c 175 § 1; 1972 ex.s. c 122 § 12.]

70.96A.140 Involuntary commitment of alcoholics.

(1) When the person in charge of a treatment facility, or his designee, receives information alleging that a person is incapacitated as a result of alcoholism, the person in charge, or his designee, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court or district court. The petition shall allege that the person is an alcoholic who is incapacitated by alcohol, or that the person has twice before in the preceding twelve months been admitted for the voluntary treatment for alcoholism pursuant to RCW 70.96A.110 and is in need of a more sustained treatment program, or that the person is an alcoholic who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the petitioning facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than five and no more than ten days after the date the petition was filed unless the person petitioned against is presently being detained by the facility, pursuant to RCW 70.96A.120, as now or hereafter amended, in which case the hearing shall be held within forty-eight hours of the filing of the petition: *Provided, however,* That the above specified forty-eight hours shall be computed by including Saturdays but excluding Sundays and holidays: *Provided further,* That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his next of kin, a parent or his legal guardian if he is a minor, and any

other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall be present unless the court believes that his presence is likely to be injurious to him; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he shall be given an opportunity to be examined by a court appointed licensed physician. If he refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment facility. It shall not order commitment of a person unless it determines that an approved treatment facility is able to provide adequate and appropriate treatment for him and the treatment is likely to be beneficial.

(5) A person committed under this section shall remain in the facility for treatment for a period of thirty days unless sooner discharged. At the end of the thirty day period, he shall be discharged automatically unless the facility, before expiration of the period, files a petition for his recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the facility shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) of this section who has not been discharged by the facility before the end of the ninety day period shall be discharged at the expiration of that period unless the facility, before expiration of the period, obtains a court order on the grounds set forth in subsection (1) of this section for recommitment for a further period not to exceed ninety days. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the facility shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) of this section are permitted.

(7) Upon the filing of a petition for recommitment under subsections (5) or (6) of this section, the court shall fix a date for hearing no less than five and no more than ten days after the date the petition was filed: *Provided,* That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the

petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for commitment, one of his parents or his legal guardian if he is a minor, and his attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(8) The facility shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment facility to another if transfer is medically advisable.

(9) A person committed to the custody of a facility for treatment shall be discharged at any time before the end of the period for which he has been committed and he shall be discharged by order of the court if either of the following conditions are met:

(a) In case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that he is no longer an alcoholic or the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(10) The court shall inform the person whose commitment or recommitment is sought of his right to contest the application, be represented by counsel at every stage of any proceedings relating to his commitment and recommitment, and have counsel appointed by the court or provided by the court, if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. The person shall, if he is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his right to be examined by a licensed physician of his choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(11) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(12) The venue for proceedings under this section is the county in which person to be committed resides or is present. [1977 ex.s. c 129 § 1; 1974 ex.s. c 175 § 2; 1972 ex.s. c 122 § 14.]

70.96A.150 Records of alcoholics and intoxicated persons. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1) of this section, the secretary may receive information from patients' records

for purposes of research into the causes and treatment of alcoholism, and the evaluation of alcoholism and treatment programs. Information under this subsection shall not be published in a way that discloses patients' names or otherwise discloses their identities. [1972 ex.s. c 122 § 15.]

70.96A.160 Visitation and communication with patients. (1) Subject to reasonable rules regarding hours of visitation which the secretary may adopt, patients in any approved treatment facility shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The secretary may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities. [1972 ex.s. c 122 § 16.]

70.96A.170 Emergency service patrol—Establishment—Rules. (1) The state and counties, cities and other municipalities may establish or contract for emergency service patrols which are to be under the administration of the appropriate jurisdiction. A patrol consists of persons trained to give assistance in the streets and in other public places to persons who are intoxicated. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and may transport intoxicated persons to their homes and to and from treatment facilities.

(2) The secretary shall adopt rules pursuant to chapter 34.04 RCW for the establishment, training, and conduct of emergency service patrols. [1972 ex.s. c 122 § 17.]

70.96A.180 Payment for treatment—Financial ability of patients. (1) If treatment is provided by an approved treatment facility or emergency treatment is provided by a facility under RCW 70.96A.080(2)(a), and the patient has not paid or is unable to pay the charge therefor, the facility is entitled to any payment (a) received by the patient or to which he may be entitled because of the services rendered, and (b) from any public or private source available to the facility because of the treatment provided to the patient.

(2) A patient in a facility, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability, is liable to the facility for cost of maintenance and treatment of the patient therein in accordance with rates established.

(3) The secretary shall adopt rules governing financial ability that take into consideration the income, savings and other personal and real property of the person required to pay, and any support being furnished by him to any person he is required by law to support. [1972 ex.s. c 122 § 18.]

70.96A.190 Criminal laws limitations. (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or

rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) No county, municipality, or other political subdivision may interpret or apply any law of general application to circumvent the provision of subsection (1) of this section.

(3) Nothing in this chapter affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons; nor shall evidence of intoxication affect, other than as a defense, the application of any law, ordinance, resolution, or rule to conduct otherwise establishing the elements of an offense. [1972 ex.s. c 122 § 19.]

70.96A.200 Transfer of property and funds to department of social and health services. Upon the taking effect of this act, the responsible head of each agency transferred in whole or in part to the department of social and health services by *this act, shall deliver to the department of social and health services all books, documents, records, papers, files, or other writings, all cabinets, furniture, office equipment, motor vehicles, and other tangible property and all funds in its custody or under its control, used or held in the exercise of the powers and the performance of the duties and functions so transferred, along with all pending business before such agency: *Provided*, That, if the books, documents, records, papers, files and other writings pertaining to a function transferred by *this act to the department from agencies not abolished by this chapter are considered by the head of the agency from which such transfer is made to be essential to the performance of duties retained by such agency, the agency head may deliver to the division of alcoholism certified copies of such books, documents, records, papers, files and other writings. [1972 ex.s. c 122 § 23.]

*Reviser's note: "[T]his act", see note following chapter digest.

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

70.96A.210 Transfer of appropriations. Appropriations for the exercise of powers, duties and functions transferred to the department of social and health services from agencies that are not abolished by this chapter shall be transferred to and made available to the department in accordance with the provisions of RCW 70.96A.220. [1972 ex.s. c 122 § 24.]

70.96A.220 Duties of director of financial management regarding transfer of equipment, funds and appropriations. The transfer of equipment, funds and appropriations from agencies that are not abolished by *this act to the department of social and health services, as provided in the office of financial management, shall be accomplished in accordance with apportionments

among the several agencies by the director of financial management, who shall have due consideration to the total of the appropriations to the several agencies, the size and nature of the functions to be transferred and the feasibility of segregating such equipment to the various functions. The director of financial management shall certify such apportionments to the agencies affected and to the state auditor, the state treasurer and department of general administration, each of whom shall make the appropriate transfers and adjustments in their funds and appropriation accounts and equipment records in accordance with such certification. [1979 c 151 § 172; 1972 ex.s. c 122 § 25.]

*Reviser's note: "[T]his act", see note following chapter digest.

70.96A.900 Short title. This chapter may be cited as the "Uniform Alcoholism and Intoxication Treatment Act". [1972 ex.s. c 122 § 21.]

70.96A.910 Application and construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it. [1972 ex.s. c 122 § 22.]

70.96A.920 Severability—1972 ex.s. c 122. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1972 ex.s. c 122 § 20.]

70.96A.930 Section, subsection headings not part of law. Section or subsection headings as used in this chapter do not constitute any part of the law. [1972 ex.s. c 122 § 27.]

Chapter 70.98

NUCLEAR ENERGY AND RADIATION

Sections	
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70.98.900 Severability—1961 c 207.
 70.98.910 Effective date—1961 c 207.
 70.98.920 Section headings not part of law.

Joint committee on nuclear energy: Chapter 44.38 RCW.

Nuclear, thermal power facilities, joint city, public utility district, electrical companies development: Chapter 54.44 RCW.

Nuclear energy promotion and development, powers and duties of department of commerce and economic development: RCW 43.31-.280-43.31.330.

70.98.010 Declaration of policy. It is the policy of the state of Washington in furtherance of its responsibility to protect the public health and safety and to encourage, insofar as consistent with this responsibility, the industrial and economic growth of the state and to institute and maintain a regulatory and inspection program for sources and uses of ionizing radiation so as to provide for (1) compatibility with the standards and regulatory programs of the federal government, (2) a single, effective system of regulation within the state, and (3) a system consonant insofar as possible with those of other states. [1975-'76 2nd ex.s. c 108 § 12; 1961 c 207 § 1.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.020 Purpose. It is the purpose of this chapter to effectuate the policies set forth in RCW 70.98.010 as now or hereafter amended by providing for:

(1) A program of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials. [1975-'76 2nd ex.s. c 108 § 13; 1965 c 88 § 1; 1961 c 207 § 2.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.030 Definitions. (1) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(3) (a) "General license" means a license effective pursuant to regulations promulgated by the state radiation control agency, without the filing of an application, to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(b) "Specific license" means a license, issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

(5) "Source material" means (a) uranium, thorium, or any other material which the governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such; or (b) ores containing one or more of the foregoing materials, in such concentration as the governor declares by order to be source material after the United States Atomic Energy Commission, or any successor thereto, has determined the material in such concentration to be source material.

(6) "Special nuclear material" means (a) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the governor declares by order to be special nuclear material after the United States Atomic Energy Commission, or any successor thereto, has determined the material to be such, but does not include source material; or (b) any material artificially enriched by any of the foregoing, but does not include source material.

(7) "Registration" means registration with the state department of social and health services by any person possessing a source of ionizing radiation in accordance with rules, regulations and standards adopted by the department of social and health services.

(8) "Radiation source" means any type of device or substance which is capable of producing or emitting ionizing radiation. [1979 c 141 § 125; 1965 c 88 § 2; 1961 c 207 § 3.]

70.98.040 Nuclear energy promotion and development. The department of commerce and economic development through the division of nuclear energy development, known as the office of nuclear energy development, is hereby designated as the agency of state government for the promotion and development of nuclear energy in this state and shall, in addition to the powers and duties otherwise imposed by law, have the following general powers and duties:

(1) To advise the governor and the legislature with regard to the status of nuclear energy research, development, and education, and to make recommendations to the governor and the legislature designed to assure increasing progress in this field within the state.

(2) To advise and assist the governor and the legislature in developing and promoting a state policy for nuclear energy research, development, and education.

(3) To sponsor or conduct studies, collect and disseminate information, and issue periodic reports with regard to nuclear energy research, development, and education and proposals for further progress in the field of nuclear energy, and the power to acquire land and facilities for such purposes is specifically delegated to the department.

(4) To foster and support research and education relating to nuclear energy through contracts or other appropriate means of assistance.

(5) To gather, maintain, and disseminate available information concerning appropriate sites throughout the state and the advantages of locating nuclear energy industries within the state.

(6) To keep the public informed with respect to nuclear energy development within the state and the activities of the state relating thereto. [1965 c 10 § 4; 1961 c 207 § 4.]

Reviser's note: The act which contained the 1965 amendment to this section (1965 c 10) also contained construction and severability sections. These sections are codified as RCW 43.31.310, 43.31.320 and 43.31.330.

Additional powers and duties of department of commerce and economic development as to nuclear energy promotion and development: RCW 43.31.300.

Division of nuclear energy development: RCW 43.31.040.

70.98.050 State radiation control agency. (1) The department of social and health services is designated as the state radiation control agency, hereinafter referred to as the agency, and shall be the state agency having sole responsibility for administration of the regulatory, licensing and radiation control provisions of this chapter.

(2) The secretary of social and health services shall be director of the agency, hereinafter referred to as the secretary, who shall perform the functions vested in the agency pursuant to the provisions of this chapter.

(3) The agency shall appoint a state radiological control officer, and in accordance with the laws of the state, fix his compensation and prescribe his powers and duties.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of ionizing radiation;

(b) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials;

(c) Formulate, adopt, promulgate, and repeal codes, rules and regulations relating to control of sources of ionizing radiation;

(d) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation;

(e) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(f) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation;

(g) Collect and disseminate information relating to control of sources of ionizing radiation; including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(iii) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon.

(h) In connection with any contested case as defined by RCW 34.04.010 or any other administrative proceedings as provided for in this chapter, have the power to issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records or documents. [1971 ex.s. c 189 § 10; 1970 ex.s. c 18 § 16; 1965 c 88 § 3; 1961 c 207 § 5.]

70.98.080 Rules and regulations—Licensing requirements and procedure—Registration of sources of ionizing radiation—Exemptions from registration or licensing. (1) The agency shall provide by rule or regulation for general or specific licensing of byproduct, source, special nuclear materials, or devices or equipment utilizing such materials, or other radioactive material occurring naturally or produced artificially. Such rule or regulation shall provide for amendment, suspension, or revocation of licenses. Such rule or regulation shall provide that:

(a) Each application for a specific license shall be in writing and shall state such information as the agency, by rule or regulation, may determine to be necessary to decide the technical, insurance, and financial qualifications, or any other qualification of the applicant as the agency may deem reasonable and necessary to protect the occupational and public health and safety. The agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the agency deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. In no event shall the agency grant a specific license to any applicant who has never possessed a specific license issued by a recognized state or federal authority until the agency has conducted an inspection which insures that the applicant can meet the rules, regulations and standards adopted pursuant to this chapter. All applications and statements shall be signed by the applicant or licensee. The agency may require any applications or statements to be made under oath or affirmation;

(b) Each license shall be in such form and contain such terms and conditions as the agency may by rule or regulation prescribe;

(c) No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this chapter.

(2) The agency may require registration of all sources of ionizing radiation.

(3) The agency may exempt certain sources of ionizing radiation or kinds of uses or users from the registration or licensing requirements set forth in this section when the agency makes a finding after approval of the technical advisory board that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(4) In promulgating rules and regulations pursuant to this chapter the agency shall, insofar as practical, strive to avoid requiring dual licensing, and shall provide for such recognition of other state or federal licenses as the agency shall deem desirable, subject to such registration requirements as the agency may prescribe. [1965 c 88 § 5; 1961 c 207 § 8.]

70.98.090 Inspection. The agency or its duly authorized representative shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder, except that entry into areas under the exclusive jurisdiction of the federal government, or security areas under the direct or indirect jurisdiction of the federal government, shall be effected only with the concurrence of the federal government or its duly designated representative. [1961 c 207 § 9.]

70.98.100 Records. (1) The agency shall require each person who possesses or uses a source of ionizing radiation to maintain necessary records relating to its receipt, use, storage, transfer, or disposal and such other records as the agency may require which will permit the determination of the extent of occupational and public exposure from the radiation source. Copies of these records shall be submitted to the agency on request. These requirements are subject to such exemptions as may be provided by rules.

(2) The agency may by rule and regulation establish standards requiring that personnel monitoring be provided for any employee potentially exposed to ionizing radiation and may provide for the reporting to any employee of his radiation exposure record. [1961 c 207 § 10.]

70.98.110 Federal-state agreements—Authorized—Effect as to federal licenses. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state pursuant to this chapter.

(2) Any person who, on the effective date of an agreement under subsection (1) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this chapter which shall expire either ninety days after the receipt from the state radiation control agency of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier. [1965 c 88 § 6; 1961 c 207 § 11.]

70.98.120 Inspection agreements and training programs. (1) The agency is authorized to enter into an agreement or agreements with the federal government, other states, or interstate agencies, whereby this state will perform on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter. [1961 c 207 § 12.]

70.98.130 Administrative procedure. In any proceeding under this chapter for the issuance or modification or repeal of rules and regulations relating to control of sources of ionizing radiation, the agency shall comply with the requirements of RCW 34.04.020.

Notwithstanding any other provision of this chapter, whenever the agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, the agency may, in accordance with RCW 34.04.030 without notice or hearing, issue a regulation or order reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. As specified in RCW 34.04.030, such regulations or orders shall be effective immediately. [1961 c 207 § 13.]

70.98.140 Injunction proceedings. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the attorney general upon the request of the agency, after notice to such person and opportunity to comply, may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the agency that such person has engaged in, or is about to engage in, any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. [1961 c 207 § 14.]

70.98.150 Prohibited uses. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless licensed by or registered with,

or exempted by the agency in accordance with the provisions of this chapter. [1965 c 88 § 7; 1961 c 207 § 15.]

70.98.160 Impounding of materials. The agency shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder. [1961 c 207 § 16.]

70.98.170 Prohibition—Fluoroscopic x-ray shoe-fitting devices. The operation or maintenance of any x-ray, fluoroscopic, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet is prohibited. This prohibition does not apply to any licensed physician, surgeon, podiatrist, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of such persons. [1973 c 77 § 27; 1961 c 207 § 17.]

70.98.180 Exemptions. This chapter shall not apply to the following sources or conditions:

(1) Radiation machines during process of manufacture, or in storage or transit: *Provided*, That this exclusion shall not apply to functional testing of such machines.

(2) Any radioactive material while being transported in conformity with regulations adopted by any federal agency having jurisdiction therein, and specifically applicable to the transportation of such radioactive materials.

(3) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the Atomic Energy Commission, or any successor thereto. [1965 c 88 § 8; 1961 c 207 § 18.]

70.98.190 Professional uses. Nothing in this chapter shall be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the immediate direction of a licensed practitioner of the healing arts acting within the scope of his professional license. [1961 c 207 § 19.]

70.98.200 Penalties. Any person who violates any of the provisions of this chapter or rules, regulations, or orders in effect pursuant thereto shall be guilty of a gross misdemeanor. [1961 c 207 § 20.]

70.98.210 Recommended legislation. The agency shall study, formulate, and recommend to the legislature from time to time specific recommendations to further the purposes of this chapter. [1975-'76 2nd ex.s. c 108 § 14; 1961 c 207 § 24.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21 F.010.

70.98.900 Severability—1961 c 207. If any part, or parts, of this act shall be held unconstitutional, the

remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part or parts can then be administered for the declared purposes of this act. [1961 c 207 § 21.]

70.98.910 Effective date—1961 c 207. The provisions of this act relating to the control of byproduct, source and special nuclear materials shall become effective on the effective date of the agreement between the federal government and this state as authorized in RCW 70.98.110. All other provisions of this act shall become effective on the 30th day of June, 1961. [1961 c 207 § 23.]

70.98.920 Section headings not part of law. Section headings as used in this chapter do not constitute any part of the law. [1961 c 207 § 25.]

Chapter 70.100

EYE PROTECTION—PUBLIC AND PRIVATE EDUCATIONAL INSTITUTIONS

Sections	
70.100.010	"Eye protection areas" defined.
70.100.020	Wearing of eye protection devices required—Furnishing of—Costs.
70.100.030	Standard requirement for eye protection devices.
70.100.040	Superintendent of public instruction to circulate instruction manual to public and private educational institutions.

70.100.010 "Eye protection areas" defined. As used in this chapter:

"Eye protection areas" means areas within vocational or industrial arts shops, science or other school laboratories, or schools within state institutional facilities as designated by the state superintendent of public instruction in which activities take place involving:

- (1) Hot molten metals or other molten materials;
- (2) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;
- (3) Heat treatment, tempering or kiln firing of any metal or other materials;
- (4) Gas or electric arc welding, or other forms of welding processes;
- (5) Corrosive, caustic, or explosive materials;
- (6) Custodial or other service activity potentially hazardous to the eye: *Provided*, That nothing in this chapter shall supersede regulations heretofore or hereafter established by the department of labor and industries respecting such activity; or
- (7) Any other activity or operation involving mechanical or manual work in any area that is potentially hazardous to the eye. [1969 ex.s. c 179 § 1.]

70.100.020 Wearing of eye protection devices required—Furnishing of—Costs. Every person shall wear eye protection devices when participating in, observing, or performing any function in connection with any courses or activities taking place in eye protection areas of any private or public school, college, university, or other public or private educational institution in this

state, as designated by the superintendent of public instruction. The governing board or authority of any public school shall furnish the eye protection devices prescribed in RCW 70.100.030 without cost to all teachers and students in grades K-12 engaged in activities potentially dangerous to the human eye, and the governing body of each institution of higher education and vocational technical institute shall furnish such eye protection devices free or at cost to all teachers and students similarly engaged at the institutions of higher education and vocational technical institutes. Eye protection devices shall be furnished on a loan basis to all visitors observing activities hazardous to the eye. [1969 ex.s. c 179 § 2.]

70.100.030 Standard requirement for eye protection devices. Eye protection devices, which shall include plano safety spectacles, plastic face shields or goggles, shall comply with the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z87.1-1968 or later revisions thereof. [1969 ex.s. c 179 § 3.]

70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions. The superintendent of public instruction, after consulting with the department of labor and industries, and the division of vocational education shall prepare and circulate to each public and private educational institution in this state within six months of the date of passage of this chapter, a manual containing instructions and recommendations for the guidance of such institutions in implementing the eye safety provisions of this chapter. [1969 ex.s. c 179 § 4.]

Chapter 70.104

PESTICIDES—HEALTH HAZARDS

Sections

70.104.010	Declaration.
70.104.020	"Pesticide" defined.
70.104.030	Powers and duties of department of social and health services.
70.104.040	Pesticide emergencies—Authority of department of agriculture not infringed upon.
70.104.050	Investigation of human exposure to pesticides.
70.104.060	Technical assistance, consultations and services to physicians and agencies authorized.

70.104.010 Declaration. The department of social and health services has responsibility to protect and enhance the public health and welfare. As a consequence, it must be concerned with both natural and artificial environmental factors which may adversely affect the public health and welfare. Dangers to the public health and welfare related to the use of pesticides require specific legislative recognition of departmental authority and responsibility in this area. [1971 ex.s. c 41 § 1.]

70.104.020 "Pesticide" defined. For the purposes of this chapter pesticide means, but is not limited to:

(1) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect,

rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director of agriculture may declare to be a pest; or

(2) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; or

(3) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used; or

(4) Any fungicide, rodenticide, herbicide, insecticide, and nematocide. [1971 ex.s. c 41 § 2.]

70.104.030 Powers and duties of department of social and health services. (1) The department of social and health services shall investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. In order to adequately investigate such cases, the department of social and health services shall have the power to:

(a) Take all necessary samples and human or animal tissue specimens for diagnostic purposes: *Provided*, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent;

(b) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of pesticide poisoning.

(2) The state department of social and health services shall, by rule and regulation adopted pursuant to the Administrative Procedure Act, chapter 34.04 RCW, as it now exists or is hereafter amended, and, in any event, with due notice and a hearing for the adoption of permanent rules, establish procedures for the prevention of any recurrence of poisoning and the department shall immediately notify the department of agriculture and other appropriate agencies of the results of its investigation for such action as the department of agriculture or such other agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency. [1971 ex.s. c 41 § 3.]

70.104.040 Pesticide emergencies—Authority of department of agriculture not infringed upon. (1) In any case where an emergency relating to pesticides occurs that represents a hazard to the public due to toxicity of the material, the quantities involved or the environment in which the incident takes place, such emergencies including but not limited to fires, spillage, and accidental contamination, the person or agent of such person having actual or constructive control of the pesticides involved shall immediately notify the department of social and health services by telephone or the fastest available method.

(2) Upon notification or discovery of any pesticide emergency the department of social and health services shall:

(a) Make such orders and take such actions as are appropriate to assume control of the property and to dispose of hazardous substances, prevent further contamination, and restore any property involved to a non-hazardous condition. In the event of failure of any individual to obey and carry out orders pursuant to this section, the department of social and health services shall have all power and authority to accomplish those things necessary to carry out such order. Any expenses incurred by the department of social and health services as a result of intentional failure of any individual to obey its lawful orders shall be charged as a debt against such individual.

(3) In any case where the department of social and health services has assumed control of property pursuant to this chapter, such property shall not be reoccupied or used until such time as written notification of its release for use is received from the secretary of the department of social and health services or his designee. Such action shall take into consideration the economic hardship, if any, caused by having the department assume control of property, and release shall be accomplished as expeditiously as possible. Nothing in this chapter shall prevent a farmer from continuing to process his crops and/or animals provided that it does not endanger the public health.

(4) The department shall recognize the pesticide industry's responsibility and active role in minimizing the effect of pesticide emergencies and shall provide for maximum utilization of these services.

(5) Nothing in this chapter shall be construed in any way to infringe upon or negate the authority and responsibility of the department of agriculture in its application and enforcement of the Washington Pesticide Act, *chapter 15.57 RCW and the Washington Pesticide Application Act, chapter 17.21 RCW. The department of social and health services shall work closely with the department of agriculture in the enforcement of this chapter and shall keep it appropriately advised. [1971 ex.s. c 41 § 4.]

*Reviser's note: "chapter 15.57 RCW" was repealed in its entirety by 1971 ex.s. c 190 § 47. Later enactment, see chapter 15.58 RCW.

70.104.050 Investigation of human exposure to pesticides. The department of social and health services shall investigate human exposure to pesticides, and in order to carry out such investigations shall have authority to secure and analyze appropriate specimens of human tissue and samples representing sources of possible exposure. [1971 ex.s. c 41 § 5.]

70.104.060 Technical assistance, consultations and services to physicians and agencies authorized. In order effectively to prevent human illness due to pesticides and to carry out the requirements of this chapter, the department of social and health services is authorized to provide technical assistance and consultation regarding health effects of pesticides to physicians and other agencies, and is authorized to operate an analytical chemical

laboratory and may provide analytical and laboratory services to physicians and other agencies to determine pesticide levels in human and other tissues, and appropriate environmental samples. [1971 ex.s. c 41 § 6.]

Chapter 70.105

HAZARDOUS WASTE DISPOSAL

Sections	
70.105.010	Definitions.
70.105.020	Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies.
70.105.030	List and information to be furnished by depositor of hazardous waste—Rules and regulations.
70.105.040	Disposal site or facility—Acquisition—Disposal fee schedule.
70.105.050	Disposal at other than approved site prohibited—Exception.
70.105.060	Review of rules, regulations, criteria and fee schedules.
70.105.070	Criteria for receiving waste at disposal site.
70.105.080	Violations—Civil penalties—Enforcement—Procedure.
70.105.090	Violations—Gross misdemeanor.
70.105.100	Powers and duties of department.
70.105.110	Exceptions—Other acts not affected.

70.105.010 Definitions. The words and phrases defined in this section shall have the meanings indicated when used in this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or his designee.

(3) "Disposal site" means a geographical site in or upon which extremely hazardous wastes are disposed of in accordance with the provisions of this chapter.

(4) "Dispose or disposal" means the discarding or abandoning of extremely hazardous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned.

(5) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned nonradioactive substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

(6) "Extremely hazardous waste" means any dangerous waste which

(a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form

(i) presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife, and

(ii) is highly toxic to man or wildlife

(b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment.

(7) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(8) "Pesticide" shall have the meaning of the term as defined in RCW 15.58.030 as now or hereafter amended.

(9) "Solid waste advisory committee" means the same advisory committee as per RCW 70.95.040 through 70.95.070. [1975-'76 2nd ex.s. c 101 § 1.]

Appropriation—1975-'76 2nd ex.s. c 101 § 12: "There is appropriated to the department of ecology from the state and local improvements revolving account of the general fund out of the proceeds of the sale of bonds or notes as authorized in chapter 43.83A RCW (Referendum 26) the sum of one million three hundred fifty-three thousand dollars, or as much thereof as may be necessary, for the following purposes:

(1) The sum of one hundred fifty-three thousand dollars for the department to develop a comprehensive plan for the adequate treatment of extremely hazardous wastes being generated in the state, and the techniques and requirements necessary for adequately disposing of such wastes and for securing and monitoring disposal sites. The objective of such a comprehensive plan shall be to determine the statewide facility requirements for the adequate disposal of extremely hazardous wastes being generated in the state and for those expected to be generated in the future.

(2) The sum of one million two hundred thousand dollars for the purchase of real property on the Hanford Reservation by the department for the construction of a disposal site for extremely hazardous wastes and for the construction of facilities necessary for the operation of the disposal site including, but not limited to, security and monitoring facilities." [1975-'76 2nd ex.s. c 101 § 12.]

70.105.020 Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies. The department after notice and public hearing shall:

(1) Adopt regulations designating as extremely hazardous wastes subject to the provisions of this chapter those substances which exhibit characteristics consistent with the definition provided in RCW 70.105.010(6);

(2) Adopt and may revise when appropriate, minimum standards and regulations for disposal of extremely hazardous wastes to protect against hazards to the public, and to the environment. Before adoption of such standards and regulations, the department shall consult with appropriate agencies of interested local governments and secure technical assistance from the department of agriculture, the department of social and health services, the department of game, the department of natural resources, the department of fisheries, the department of labor and industries, and the state fire marshal. [1975-'76 2nd ex.s. c 101 § 2.]

70.105.030 List and information to be furnished by depositor of hazardous waste—Rules and regulations.

(1) After the effective date of the regulations adopted by the department designating extremely hazardous wastes, any person planning to dispose of extremely hazardous waste as designated by the department shall provide the operator of the disposal site with a list setting forth the extremely hazardous wastes for disposal, the amount of such wastes, the general chemical and mineral composition of such waste listed by approximate maximum and

minimum percentages, and the origin of any such waste. Such list, when appropriate, shall include information on antidotes, first aid, or safety measures to be taken in case of accidental contact with the particular extremely hazardous waste being disposed.

(2) The department shall adopt and enforce all rules and regulations including the form and content of the list, necessary and appropriate to accomplish the purposes of subsection (1) of this section. [1975-'76 2nd ex.s. c 101 § 3.]

70.105.040 Disposal site or facility—Acquisition—Disposal fee schedule. (1) The department through the department of general administration, is authorized to acquire interests in real property from the federal government on the Hanford Reservation by gift, purchase, lease, or other means, to be used for the purpose of developing, operating, and maintaining an extremely hazardous waste disposal site or facility by the department, either directly or by agreement with public or private persons or entities: *Provided*, That lands acquired under this section shall not be inconsistent with a local comprehensive plan approved prior to January 1, 1976: *And provided further*, That no lands acquired under this section shall be subject to land use regulation by a local government.

(2) The department may establish an appropriate fee schedule for use of such disposal facilities to offset the cost of administration of this chapter and the cost of development, operation, maintenance, and perpetual management of the disposal site. If operated by a private entity, the disposal fee may be such as to provide a reasonable profit. [1975-'76 2nd ex.s. c 101 § 4.]

70.105.050 Disposal at other than approved site prohibited—Exception. No person shall dispose of designated extremely hazardous wastes at any disposal site in the state other than the disposal site established and approved for such purpose under provisions of this chapter, except when such wastes are going to a processing facility which will result in the waste being reclaimed, treated, detoxified, neutralized, or otherwise processed to remove its harmful properties or characteristics. [1975-'76 2nd ex.s. c 101 § 5.]

70.105.060 Review of rules, regulations, criteria and fee schedules. All rules, regulations, criteria, and fee schedules adopted by the department to implement the provisions of this chapter shall be reviewed by the solid waste advisory committee for the purpose of recommending revisions, additions, or modifications thereto as provided for the review of solid waste regulations and standards pursuant to chapter 70.95 RCW. [1975-'76 2nd ex.s. c 101 § 6.]

70.105.070 Criteria for receiving waste at disposal site. The department may elect to receive dangerous waste at the site provided under this chapter, provided

(1) it is upon request of the owner, producer, or person having custody of the waste, and

(2) upon the payment of a fee to cover disposal

(3) it can be reasonably demonstrated that there is no other disposal sites in the state that will handle such dangerous waste, and

(4) the site is designed to handle such a request or can be modified to the extent necessary to adequately dispose of the waste, or

(5) if a demonstrable emergency and potential threat to the public health and safety exists. [1975-'76 2nd ex.s. c 101 § 7.]

70.105.080 Violations—Civil penalties—Enforcement—Procedure. (1) Every person who fails to comply with any provision of RCW 70.105.010 through 70.105.090 or of the rules adopted thereunder shall be subjected to a penalty in an amount of not more than one thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department of ecology shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper. Any penalty imposed by the provisions of this section shall be subject to review by the pollution control hearings board in accordance with chapter 43-.21B RCW.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review by the hearings board is filed. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application. Any penalty resulting from a decision of the hearings board shall become due and payable thirty days after receipt of the notice setting forth the decision.

(4) If the amount of any penalty is not paid to the department of ecology within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the

same as an ordinary civil action except as otherwise in this chapter provided. [1975-'76 2nd ex.s. c 101 § 8.]

70.105.090 Violations—Gross misdemeanor. In addition to the penalties imposed pursuant to RCW 70.105.080, any person who violates any provisions of RCW 70.105.010 through 70.105.090, or of the rules implementing RCW 70.105.010 through 70.105.090, and any person who knowingly aids or abets another in conducting any violation of any provisions of RCW 70.105.010 through 70.105.090, or of the rules implementing RCW 70.105.010 through 70.105.090, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, for each separate violation. [1975-'76 2nd ex.s. c 101 § 9.]

70.105.100 Powers and duties of department. The department in performing its duties under this chapter may:

(1) Conduct studies and coordinate research programs pertaining to extremely hazardous waste management;

(2) Render technical assistance to generators of dangerous and extremely hazardous wastes and to state and local agencies in the planning and operation of hazardous waste programs;

(3) Encourage and provide technical assistance to waste generators to form and operate a "waste exchange" for the purpose of finding users for dangerous and extremely hazardous wastes that would otherwise be disposed of: *Provided*, That such technical assistance shall not violate the confidentiality of manufacturing processes; and

(4) Provide for appropriate surveillance and monitoring of extremely hazardous waste disposal practices in the state. [1975-'76 2nd ex.s. c 101 § 10.]

70.105.110 Exceptions—Other acts not affected. (1) Nothing in this chapter shall apply to any radioactive waste or radioactive material.

(2) Nothing in this chapter shall alter, amend, or supersede the provisions of chapter 80.50 RCW, as now existing or hereafter amended, or grant to the department or to the solid waste advisory committee any authority regarding the regulation, certification, construction, or siting of thermal power plants, as defined in such acts. [1975-'76 2nd ex.s. c 101 § 11.]

Chapter 70.106

HAZARDOUS SUBSTANCES AND ARTICLES (WASHINGTON POISON PREVENTION ACT OF 1974)

Sections	Purpose.
70.106.010	Short title.
70.106.020	Definitions—Construction.
70.106.030	"Director" defined.
70.106.040	"Sale" defined.
70.106.050	"Household substance" defined.
70.106.060	"Package" defined.
70.106.070	

70.106.080	"Special packaging" defined.
70.106.090	"Labeling" defined.
70.106.100	Standards for packaging.
70.106.110	Exceptions from packaging standards.
70.106.120	Adoption of rules and regulations under federal poison prevention packaging act.
70.106.130	Technical advisory committee.
70.106.140	Penalties.
70.106.900	Severability—1974 ex.s. c 49.
70.106.905	Saving—1974 ex.s. c 49.
70.106.910	Chapter cumulative and nonexclusive.

70.106.010 Purpose. The purpose of this chapter is to provide for special packaging to protect children from personal injury, serious illness or death resulting from handling, using or ingesting household substances, and to provide penalties. [1974 ex.s. c 49 § 1.]

70.106.020 Short title. This chapter shall be cited as the Washington Poison Prevention Act of 1974. [1974 ex.s. c 49 § 2.]

70.106.030 Definitions—Construction. The definitions in RCW 70.106.040 through 70.106.090 unless the context otherwise requires shall govern the construction of this chapter. [1974 ex.s. c 49 § 3.]

70.106.040 "Director" defined. "Director" means the director of the department of agriculture of the state of Washington, or his duly authorized representative. [1974 ex.s. c 49 § 4.]

70.106.050 "Sale" defined. "Sale" means to sell, offer for sale, hold for sale, handle or use as an inducement in the promotion of a household substance or the sale of another article or product. [1974 ex.s. c 49 § 5.]

70.106.060 "Household substance" defined. "Household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:

(1) A "hazardous substance", which means (a) any substance or mixture of substances or product which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children; (b) any substances which the director by regulation finds to meet the requirements of subsection (1)(a) of this section; (c) any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health, safety or welfare; and (d) any toy or other article intended for use by children which the director by regulation determines presents an electrical, mechanical or thermal hazard.

(2) A pesticide as defined in the Washington Pesticide Control Act, chapter 15.58 RCW as now or hereafter amended;

(3) A food, drug, or cosmetic as those terms are defined in the Uniform Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW as now or hereafter amended; or

(4) A substance intended for use as fuel when stored in portable containers and used in the heating, cooking, or refrigeration system of a house; or

(5) Any other substance which the director may declare to be a household substance subsequent to a hearing as provided for under the provisions of chapter 34.04 RCW, Administrative Procedure Act, for the adoption of rules. [1974 ex.s. c 49 § 6.]

70.106.070 "Package" defined. "Package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of RCW 70.106.110(1)(b), also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include:

(1) Any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(2) Any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping. [1974 ex.s. c 49 § 7.]

70.106.080 "Special packaging" defined. "Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time. [1974 ex.s. c 49 § 8.]

70.106.090 "Labeling" defined. "Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance. [1974 ex.s. c 49 § 9.]

70.106.100 Standards for packaging. (1) The director may establish in accordance with the provisions of this chapter, by regulation, standards for the special packaging of any household substance if he finds that:

(a) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance; and

(b) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(2) In establishing a standard under this section, the director shall consider:

(a) The reasonableness of such standard;

(b) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(c) The manufacturing practices of industries affected by this chapter; and

(d) The nature and use of the household substance.

(3) In carrying out the provisions of this chapter, the director shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

(4) Nothing in this chapter authorizes the director to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in RCW 70.106.110(1)(b), labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the director may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

(5) The director shall cause the regulations promulgated under this chapter to conform with the requirements or exemptions of the Federal Hazardous Substances Act and with the regulations or interpretations promulgated pursuant thereto. [1974 ex.s. c 49 § 10.]

70.106.110 Exceptions from packaging standards.

(1) For the purpose of making any household substance which is subject to a standard established under RCW 70.106.100 readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if:

(a) The manufacturer or packer also supplies such substance in packages which comply with such standard; and

(b) The packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the director may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(2) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(3) In the case of a household substance subject to such a standard which is packaged under subsection (1) of this section in a noncomplying package, if the director determines that such substance is not also being supplied by a manufacturer or packer in popular size packages which comply with such standard, he may, after giving the manufacturer or packer an opportunity to comply

with the purposes of this chapter, by order require such substance to be packaged by such manufacturer or packer exclusively in special packaging complying with such standard if he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this chapter. [1974 ex.s. c 49 § 11.]

70.106.120 Adoption of rules and regulations under federal poison prevention packaging act. One of the purposes of this chapter is to promote uniformity with the Poison Prevention Packaging Act of 1970 and rules and regulations adopted thereunder. In accordance with such declared purpose, all of the special packaging rules and regulations adopted under the Poison Prevention Packaging Act of 1970 (84 Stat. 1670; 7 U.S.C. Sec. 135; 15 U.S.C. Sec. 1261, 1471-1476; 21 U.S.C. Sec. 343, 352, 353, 362) on July 24, 1974, are hereby adopted as rules and regulations applicable to this chapter. In addition, any rule or regulation adopted hereafter under said Federal Poison Prevention Act of 1970 concerning special packaging and published in the federal register shall be deemed to have been adopted under the provisions of this chapter. The director may, however, within thirty days of the publication of the adoption of any such rule or regulation under the Federal Poison Prevention Packaging Act of 1970, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be conducted in accord with the provisions of chapter 34.04 RCW, Administrative Procedure Act, as now enacted or hereafter amended. [1974 ex.s. c 49 § 12.]

70.106.130 Technical advisory committee. For the purpose of carrying out the provisions of this chapter the director shall, within one hundred eighty days of July 24, 1974, appoint a technical advisory committee and appoint a chairman thereof, said committee to consist of one representative from each of the following:

(1) The secretary of the department of social and health services;

(2) The pharmacy board;

(3) A hospital specializing in child welfare and poison care;

(4) The packaging closures industry;

(5) University of Washington medical school;

(6) University of Washington school of pharmacy;

(7) A specialist in pesticide and chemical handling and control from Washington State University;

(8) The public;

(9) The dairy and food division of the department of agriculture; and

(10) A member of the Washington state society of pediatrics or its designee.

Members of the technical advisory committee who are not regular full time employees of a public agency or institution shall receive twenty-five dollars for each day or major portion thereof plus reimbursement for travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now

existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 163; 1974 ex.s. c 49 § 13.]

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

70.106.140 Penalties. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and is guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense. [1974 ex.s. c 49 § 16.]

70.106.900 Severability—1974 ex.s. c 49. If any provision of this 1974 act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1974 ex.s. c 49 § 14.]

70.106.905 Saving—1974 ex.s. c 49. The enactment of this 1974 act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 24, 1974. [1974 ex.s. c 49 § 15.]

70.106.910 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1974 ex.s. c 49 § 17.]

Chapter 70.107 NOISE CONTROL

Sections	
70.107.010	Purpose.
70.107.020	Definitions.
70.107.030	Powers and duties of department.
70.107.040	Technical advisory committee.
70.107.050	Civil penalties.
70.107.060	Other rights, remedies, powers, duties and functions—Local control—Approval—Procedure.
70.107.070	Rules relating to motor vehicles—Violations—Penalty.
70.107.080	Exemptions.
70.107.900	Construction—Severability—1974 ex.s. c 183.
70.107.910	Short title.

70.107.010 Purpose. The legislature finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Antinoise measures of the past have not adequately protected against the invasion of these interests by noise. There is a need, therefore, for an expansion of efforts state-wide directed toward the abatement and control of noise, considering the social and economic impact upon the community and the state. The purpose of this chapter is to provide authority for such an expansion of efforts, supplementing existing programs in the field. [1974 ex.s. c 183 § 1.]

70.107.020 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Department" means the department of ecology.
- (2) "Director" means director of the department of ecology.
- (3) "Local government" means county or city government or any combination of the two.
- (4) "Noise" means the intensity, duration and character of sounds from any and all sources.
- (5) "Person" means any individual, corporation, partnership, association, governmental body, state, or other entity whatsoever. [1974 ex.s. c 183 § 2.]

70.107.030 Powers and duties of department. The department is empowered as follows:

(1) The department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in identified environments in order to protect against adverse affects of noise on the health, safety and welfare of the people, the value of property, and the quality of environment: *Provided*, That in so doing the department shall take also into account the economic and practical benefits to be derived from the use of various products in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise control technology and practice is provided. These rules may include, but shall not be limited to:

(a) Performance standards setting allowable noise limits for the operation of products which produce noise;

(b) Use standards regulating, as to time and place, the operation of individual products which produce noise above specified levels considering frequency spectrum and duration: *Provided*, The rules shall provide for temporarily exceeding those standards for stated purposes; and

(c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.

(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.

(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.

(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in RCW 46.09.020 contributes significantly to environmental

noise levels and directs the department, in exercising the rule-making authority under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.

(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975. [1974 ex.s. c 183 § 3.]

70.107.040 Technical advisory committee. The director shall name a technical advisory committee to assist the department in the implementation of this chapter. Committee members shall be entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 164; 1974 ex.s. c 183 § 4.]

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

70.107.050 Civil penalties. (1) Any person who violates any rule adopted by the department under this chapter shall be subject to a civil penalty not to exceed one hundred dollars. All violations of this chapter shall be administered pursuant to the provisions of chapter 34.04 RCW, the state administrative procedure act.

Penalties shall become due and payable thirty days from the date of receipt of a notice of penalty unless within such time said notice is appealed to the pollution control hearings board pursuant to the provisions of chapter 43.21B RCW and procedural rules adopted thereunder. In cases in which appeals are timely filed, penalties sustained by the pollution control hearings board shall become due and payable on the issuance of said board's final order in the appeal.

(2) Whenever penalties incurred pursuant to this section have become due and payable but remain unpaid, the attorney general shall, upon request of the director, bring an action in the name of the state of Washington, in the superior court of Thurston county or in the county in which the violation occurred for recovery of penalties incurred. In all such actions the procedures and rules of evidence shall be the same as in any other civil action. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund. [1974 ex.s. c 183 § 5.]

70.107.060 Other rights, remedies, powers, duties and functions—Local control—Approval—Procedure.

(1) Nothing in this chapter shall be construed to deny, abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(2) Nothing in this chapter shall deny, abridge or alter any powers, duties and functions relating to noise abatement and control now or hereafter vested in any state agency, nor shall this chapter be construed as granting jurisdiction over the industrial safety and health of employees in work places of the state, as now or hereafter vested in the department of labor and industries.

(3) No local government shall adopt resolutions, ordinances, rules or regulations concerned with the control of noise which shall be effective prior to adoption of

maximum noise levels and the rules adopted by the department pursuant to this chapter or January 31, 1975, whichever occurs sooner. Such resolutions, ordinances, rules, or regulations must be consistent with RCW 70.107.060(4).

(4) Standards and other control measures adopted by the department under this chapter shall be exclusive except as hereinafter provided. A local government may impose limits or control sources differing from those adopted or controlled by the department upon a finding that such requirements are necessitated by special conditions. No such noise limiting requirements of local government shall be valid unless first approved by the department. If disapproved the local government may appeal the decision to the pollution control hearings board which shall decide the appeal on the basis of the provisions of this chapter, and the applicable regulations, together with such briefs, testimony, and oral argument as the hearings board in its discretion may require. In the determination of whether to grant any such approval, the department shall give consideration to the reasonableness and practicability of compliance with particular attention to the situation of stationary sources, the noise producing operations of which are conducted at or near jurisdictional boundaries.

(5) In carrying out the rule-making authority provided in this chapter, the department shall follow the procedures of the administrative procedure act, chapter 34.04 RCW, and shall take care that no rules adopted purport to exercise any powers preempted by the United States under federal law. [1974 ex.s. c 183 § 6.]

70.107.070 Rules relating to motor vehicles—Violations—Penalty. Any rule adopted under this chapter relating to the operation of motor vehicles on public highways shall be administered according to testing and inspection procedures adopted by rule by the state commission on equipment. Violation of any motor vehicle performance standard adopted pursuant to this chapter shall be a misdemeanor, enforced by such authorities and in such manner as violations of chapter 46.37 RCW. Violations subject to the provisions of this section shall be exempt from the provisions of RCW 70.107.050. [1974 ex.s. c 183 § 7.]

70.107.080 Exemptions. The department shall, in the exercise of rule-making power under this chapter, provide exemptions or specially limited regulations relating to recreational shooting and emergency or law enforcement equipment where appropriate in the interests of public safety.

The department in the development of rules under this chapter, shall consult and take into consideration the land use policies and programs of local government. [1974 ex.s. c 183 § 8.]

70.107.900 Construction—Severability—1974 ex.s. c 183. (1) This chapter shall be liberally construed to carry out its broad purposes.

(2) If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 183 § 11.]

70.107.910 Short title. This chapter shall be known and may be cited as the "Noise Control Act of 1974". [1974 ex.s. c 183 § 12.]

Chapter 70.108 OUTDOOR MUSIC FESTIVALS

Sections	
70.108.010	Legislative declaration.
70.108.020	Definitions.
70.108.030	Permits—Required—Compliance with rules and regulations.
70.108.040	Application for permit—Contents—Filing.
70.108.050	Approval or denial of permit—Corrections—Procedure—Judicial review.
70.108.060	Reimbursement of expenses incurred in reviewing request.
70.108.070	Cash deposit—Surety bond—Insurance.
70.108.080	Revocation of permits.
70.108.090	Drugs prohibited.
70.108.100	Proximity to schools, churches, homes.
70.108.110	Age of patrons.
70.108.120	Permits—Posting—Transferability.
70.108.130	Penalty.
70.108.140	Inspection of books and records.
70.108.150	Firearms—Penalty.
70.108.160	Preparations—Completion requirements.
70.108.170	Local regulations and ordinances not precluded.

Reviser's note: Throughout chapter 70.108 RCW the references to "this act" have been changed to "this chapter". "This act" [1971 ex.s. c 302] consists of this chapter, the 1971 amendments to RCW 9.40.110-9.40.130, 9.41.010, 9.41.070, 26.44.050, 70.74.135, 70.74.270, 70.74.280, and to RCW 9.27.015 and 9.91.110.

70.108.010 Legislative declaration. The legislature hereby declares it to be the public interest, and for the protection of the health, welfare and property of the residents of the state of Washington to provide for the orderly and lawful conduct of outdoor music festivals by assuring that proper sanitary, health, fire, safety, and police measures are provided and maintained. This invocation of the police power is prompted by and based upon prior experience with outdoor music festivals where the enforcement of the existing laws and regulations on dangerous and narcotic drugs, indecent exposure, intoxicating liquor, and sanitation has been rendered most difficult by the flagrant violations thereof by a large number of festival patrons. [1971 ex.s. c 302 § 19.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.108.020 Definitions. For the purposes of this chapter the following words and phrases shall have the indicated meanings:

(1) "Outdoor music festival" or "music festival" or "festival" means an assembly of persons gathered primarily for outdoor, live or recorded musical entertainment, where the predicted attendance is two thousand persons or more and where the duration of the program

is five hours or longer: *Provided*, That this definition shall not be applied to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies which do not exceed by more than two hundred fifty people the maximum seating capacity of the structure where the assembly is held: *Provided, further*, That this definition shall not apply to government sponsored fairs held on regularly established fairgrounds nor to assemblies required to be licensed under other laws or regulations of the state.

(2) "Promoter" means any person or other legal entity issued a permit to conduct an outdoor music festival.

(3) "Applicant" means the promoter who has the right of control of the conduct of an outdoor music festival who applies to the appropriate legislative authority for a license to hold an outdoor music festival.

(4) "Issuing authority" means the legislative body of the local governmental unit where the site for an outdoor music festival is located.

(5) "Participate" means to knowingly provide or deliver to the festival site supplies, materials, food, lumber, beverages, sound equipment, generators, or musical entertainment and/or to attend a music festival. A person shall be presumed to have knowingly provided as that phrase is used herein after he has been served with a court order. [1971 ex.s. c 302 § 21.]

70.108.030 Permits—Required—Compliance with rules and regulations. No person or other legal entity shall knowingly allow, conduct, hold, maintain, cause to be advertised or permit an outdoor music festival unless a valid permit has been obtained from the issuing authority for the operation of such music festival as provided for by this chapter. One such permit shall be required for each outdoor music festival. A permit may be granted for a period not to exceed sixteen consecutive days and a festival may be operated during any or all of the days within such period. Any person, persons, partnership, corporation, association, society, fraternal or social organization, failing to comply with the rules, regulations or conditions contained in this chapter shall be subject to the appropriate penalties as prescribed by this chapter. [1971 ex.s. c 302 § 22.]

70.108.040 Application for permit—Contents—Filing. Application for an outdoor music festival permit shall be in writing and filed with the clerk of the issuing authority wherein the festival is to be held. Said application shall be filed not less than ninety days prior to the first scheduled day of the festival and shall be accompanied with a permit fee in the amount of two thousand five hundred dollars. Said application shall include:

(1) The name of the person or other legal entity on behalf of whom said application is made: *Provided*, That a natural person applying for such permit shall be eighteen years of age or older;

(2) A financial statement of the applicant;

(3) The nature of the business organization of the applicant;

(4) Names and addresses of all individuals or other entities having a ten percent or more proprietary interest in the festival;

(5) The principal place of business of applicant;

(6) A legal description of the land to be occupied, the name and address of the owner thereof, together with a document showing the consent of said owner to the issuance of a permit, if the land be owned by a person other than the applicant;

(7) The scheduled performances and program;

(8) Written confirmation from the local health officer that he has reviewed and approved plans for site and development in accordance with rules, regulations and standards adopted by the state board of health. Such rules and regulations shall include criteria as to the following and such other matters as the state board of health deems necessary to protect the public's health:

(a) Submission of plans

(b) Site

(c) Water supply

(d) Sewage disposal

(e) Food preparation facilities

(f) Toilet facilities

(g) Solid waste

(h) Insect and rodent control

(i) Shelter

(j) Dust control

(k) Lighting

(l) Emergency medical facilities

(m) Emergency air evacuation

(n) Attendant physicians

(o) Communication systems

(9) A written confirmation from the appropriate law enforcement agency from the area where the outdoor music festival is to take place, showing that traffic control and crowd protection policing have been contracted for or otherwise provided by the applicant meeting the following conditions:

(a) One person for each two hundred persons reasonably expected to be in attendance at any time during the event for purposes of traffic and crowd control.

(b) The names and addresses of all traffic and crowd control personnel shall be provided to the appropriate law enforcement authority: *Provided*, That not less than twenty percent of the traffic and crowd control personnel shall be commissioned police officers or deputy sheriffs: *Provided further*, That on and after February 25, 1972 any commissioned police officer or deputy sheriff who is employed and compensated by the promoter of an outdoor music festival shall not be eligible and shall not receive any benefits whatsoever from any public pension or disability plan of which he is a member for the time he is so employed or for any injuries received during the course of such employment.

(c) During the hours that the festival site shall be open to the public there shall be at least one regularly commissioned police officer employed by the jurisdiction wherein the festival site is located for every one thousand persons in attendance and said officer shall be on duty within the confines of the actual outdoor music festival site.

(d) All law enforcement personnel shall be charged with enforcing the provisions of this chapter and all existing statutes, ordinances and regulations.

(10) A written confirmation from the appropriate law enforcement authority that sufficient access roads are available for ingress and egress to the parking areas of the outdoor music festival site and that parking areas are available on the actual site of the festival or immediately adjacent thereto which are capable of accommodating one auto for every four persons in estimated attendance at the outdoor music festival site.

(11) A written confirmation from the department of natural resources, where applicable, and the office of the state fire marshal that all fire prevention requirements have been complied with.

(12) A written statement of the applicant that all state and local law enforcement officers, fire control officers and other necessary governmental personnel shall have free access to the site of the outdoor music festival.

(13) A statement that the applicant will abide by the provisions of this chapter.

(14) The verification of the applicant warranting the truth of the matters set forth in the application to the best of the applicant's knowledge, under the penalty of perjury. [1972 ex.s. c 123 § 1; 1971 ex.s. c 302 § 23.]

70.108.050 Approval or denial of permit—Corrections—Procedure—Judicial review. Within fifteen days after the filing of the application the issuing authority shall either approve or deny the permit to the applicant. Any denial shall set forth in detail the specific grounds therefor. The applicant shall have fifteen days after the receipt of such denial or such additional time as the issuing authority shall grant to correct the deficiencies set forth and the issuing authority shall within fifteen days after receipt of such corrections either approve or deny the permit. Any denial shall set forth in detail the specific grounds therefor.

After the applicant has filed corrections and the issuing authority has thereafter again denied the permit, the applicant may within five days after receipt of such second denial seek judicial review of such denial by filing a petition in the superior court for the county of the issuing authority. The review shall take precedence over all other civil actions and shall be conducted by the court without a jury. The court shall, upon request, hear oral argument and receive written briefs and shall either affirm the denial or order that the permit be issued. An applicant may not use any other procedure to obtain judicial review of a denial. [1972 ex.s. c 123 § 2; 1971 ex.s. c 302 § 24.]

70.108.060 Reimbursement of expenses incurred in reviewing request. Any local agency requested by an applicant to give written approval as required by RCW 70.108.040 may within fifteen days after the applicant has filed his application apply to the issuing authority for reimbursement of expenses reasonably incurred in reviewing such request. Upon a finding that such expenses were reasonably incurred the issuing authority shall reimburse the local agency therefor from the funds of the permit fee. The issuing authority shall prior to the first

scheduled date of the festival return to the applicant that portion of the permit fee remaining after all such reimbursements have been made. [1971 ex.s. c 302 § 25.]

70.108.070 Cash deposit—Surety bond—Insurance. After the application has been approved the promoter shall deposit with the issuing authority, a cash deposit or surety bond. The bond or deposit shall be used to pay any costs or charges incurred to regulate health or to clean up afterwards outside the festival grounds or any extraordinary costs or charges incurred to regulate traffic or parking. The bond or other deposit shall be returned to the promoter when the issuing authority is satisfied that no claims for damage or loss will be made against said bond or deposit, or that the loss or damage claimed is less than the amount of the deposit, in which case the uncommitted balance thereof shall be returned: *Provided*, That the bond or cash deposit or the uncommitted portion thereof shall be returned not later than thirty days after the last day of the festival.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a liability insurance policy in an amount of not less than one hundred thousand dollars bodily injury coverage per person covering any bodily injury negligently caused by any officer or employee of the festival while acting in the performance of his or her duties. The policy shall name the issuing authority of the permit as an additional named insured.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a one hundred thousand dollar liability property damage insurance policy covering any property damaged due to negligent failure by any officer or employee of the festival to carry out duties imposed by this chapter. The policy shall have the issuing authority of the permit as an additional named insured. [1972 ex.s. c 123 § 3; 1971 ex.s. c 302 § 26.]

70.108.080 Revocation of permits. Revocation of any permit granted pursuant to this chapter shall not preclude the imposition of penalties as provided for in this chapter and the laws of the state of Washington. Any permit granted pursuant to the provisions of this chapter to conduct a music festival shall be summarily revoked by the issuing authority when it finds that by reason of emergency the public peace, health, safety, morals or welfare can only be preserved and protected by such revocation.

Any permit granted pursuant to the provisions of this chapter to conduct a music festival may otherwise be revoked for any material violation of this chapter or the laws of the state of Washington after a hearing held upon not less than three days notice served upon the promoter personally or by certified mail.

Every permit issued under the provisions of this chapter shall state that such permit is issued as a measure to protect and preserve the public peace, health, safety, morals and welfare, and that the right of the appropriate authority to revoke such permit is a consideration of its issuance. [1971 ex.s. c 302 § 27.]

70.108.090 Drugs prohibited. No person, persons, partnership, corporation, association, society, fraternal or social organization to whom a music festival permit has been granted shall, during the time an outdoor music festival is in operation, knowingly permit or allow any person to bring upon the premises of said music festival, any narcotic or dangerous drug as defined by chapters 69.33 or 69.40 RCW, or knowingly permit or allow narcotic or dangerous drug to be consumed on the premises, and no person shall take or carry onto said premises any narcotic or dangerous drug. [1971 ex.s. c 302 § 28.]

70.108.100 Proximity to schools, churches, homes. No music festival shall be operated in a location which is closer than one thousand yards from any schoolhouse or church, or five hundred yards from any house, residence or other human habitation unless waived by occupants. [1971 ex.s. c 302 § 29.]

70.108.110 Age of patrons. No person under the age of sixteen years shall be admitted to any outdoor music festival without the escort of his or her parents or legal guardian and proof of age shall be provided upon request. [1971 ex.s. c 302 § 30.]

70.108.120 Permits—Posting—Transferability. Any permit granted pursuant to this chapter shall be posted in a conspicuous place on the site of the outdoor music festival and such permit shall be not transferable or assignable without the consent of the issuing authority. [1971 ex.s. c 302 § 31.]

70.108.130 Penalty. (Effective until July 1, 1980.) Any person who shall wilfully fail to comply with the rules, regulations and conditions set forth in this chapter or who shall aid or abet such a violation or failure to comply, shall be deemed guilty of a gross misdemeanor. [1971 ex.s. c 302 § 32.]

70.108.130 Penalty. (Effective July 1, 1980.) Any person who shall wilfully fail to comply with the rules, regulations, and conditions set forth in this chapter or who shall aid or abet such a violation or failure to comply, shall be deemed guilty of a gross misdemeanor: *Provided*, That violation of a rule, regulation, or condition relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a rule, regulation, or condition equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor. [1979 1st ex.s. c 136 § 104; 1971 ex.s. c 302 § 32.]

Effective date—Severability—1979 1st ex.s. c 136: See notes following RCW 46.63.010.

70.108.140 Inspection of books and records. The department of revenue shall be allowed to inspect the books and records of any outdoor music festival during the period of operation of the festival and after the festival has concluded for the purpose of determining whether or not the tax laws of this state are complied with. [1972 ex.s. c 123 § 4.]

70.108.150 Firearms—Penalty. It shall be unlawful for any person, except law enforcement officers, to carry, transport or convey, or to have in his possession or under his control any firearm while on the site of an outdoor music festival.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and not more than two hundred dollars or by imprisonment in the county jail for not less than ten days and not more than ninety days or by both such fine and imprisonment. [1972 ex.s. c 123 § 5.]

70.108.160 Preparations—Completion requirements. All preparations required to be made by the provisions of this chapter on the music festival site shall be completed thirty days prior to the first day scheduled for the festival. Upon such date or such earlier date when all preparations have been completed, the promoter shall notify the issuing authority thereof, and the issuing authority shall make an inspection of the festival site to determine if such preparations are in reasonably full compliance with plans submitted pursuant to RCW 70.108.040. If a material violation exists the issuing authority shall move to revoke the music festival permit in the manner provided by RCW 70.108.080. [1972 ex.s. c 123 § 6.]

70.108.170 Local regulations and ordinances not precluded. Nothing in this chapter shall be construed as precluding counties, cities and other political subdivisions of the state of Washington from enacting ordinances or regulations for the control and regulation of outdoor music festivals nor shall this chapter repeal any existing ordinances or regulations. [1972 ex.s. c 123 § 7.]

Chapter 70.110

FLAMMABLE FABRICS—CHILDREN'S SLEEPWEAR

Sections

70.110.010	Short title.
70.110.020	Legislative finding.
70.110.030	Definitions.
70.110.040	Compliance required.
70.110.050	Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations.
70.110.060	Penalties.
70.110.070	Strict liability.
70.110.080	Personal service of process—Jurisdiction of courts.
70.110.900	Provisions additional.
70.110.910	Severability—1973 1st ex.s. c 211.

70.110.010 Short title. This chapter may be known and cited as the "Flammable Fabrics Act". [1973 1st ex.s. c 211 § 1.]

70.110.020 Legislative finding. The legislature hereby finds and declares that fabric related burns from children's sleepwear present an immediate and serious danger to the infants and children of this state. The legislature therefore declares it to be in the public interest,

and for the protection of the health, property, and welfare of the residents of this state to herein provide for flammability standards for children's sleepwear. [1973 1st ex.s. c 211 § 2.]

70.110.030 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Person" means an individual, partnership, corporation, association, or any other form of business enterprise, and every officer thereof.

(2) "Children's sleepwear" means any product of wearing apparel from infant size up to and including size fourteen which is sold or intended for sale for the primary use of sleeping or activities related to sleeping, such as nightgowns, pajamas, and similar or related items such as robes, but excluding diapers and underwear.

(3) "Fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any material or synthetic fiber, film, or substitute therefor which is intended for use, or which may reasonably be expected to be used, in children's sleepwear.

(4) The term "infant size up to and including size six-x" means the sizes defined as infant through and including six-x in Department of Commerce Voluntary Standards, Commercial Standard 151-50, "Body Measurements for the Sizing of Apparel for Infants, Babies, Toddlers, and Children", Commercial Standard 153, "Body Measurements for the Sizing of Apparel for Girls", and Commercial Standard 155, "Body Measurements for the Sizing of Boys' Apparel".

(5) "Fabric related burns" means burns that would not have been incurred but for the fact that sleepwear worn at the time of the burns did not comply with commercial standards promulgated by the secretary of commerce of the United States in March, 1971, identified as Standard for the Flammability of Children's Sleepwear (DOC FF 3-71) 36 F.R. 14062 and by the Flammable Fabrics Act 15 U.S.C. 1193. [1973 1st ex.s. c 211 § 3.]

70.110.040 Compliance required. It shall be unlawful to manufacture for sale, sell, or offer for sale any new and unused article of children's sleepwear which does not comply with the standards established in the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71), 36 F.R. 14062 and the Flammable Fabrics Act, 15 U.S.C. 1191-1204. [1973 1st ex.s. c 211 § 4.]

70.110.050 Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations. The attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1973 1st ex.s. c 211 § 5.]

70.110.060 Penalties. Any violation of this chapter is punishable, upon conviction, by a fine not exceeding five thousand dollars or by confinement in the county jail for

not exceeding one year, or both. [1973 1st ex.s. c 211 § 6.]

70.110.070 Strict liability. Any person who violates RCW 70.110.040 shall be strictly liable for fabric-related burns. [1973 1st ex.s. c 211 § 7.]

70.110.080 Personal service of process—Jurisdiction of courts. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has violated any provision of this chapter. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [1973 1st ex.s. c 211 § 8.]

70.110.900 Provisions additional. The provisions of this chapter shall be in addition to and not a substitution for or limitation of any other law. [1973 1st ex.s. c 211 § 9.]

70.110.910 Severability—1973 1st ex.s. c 211. If any provision of this chapter, or its application to any person or circumstance is held invalid the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 211 § 10.]

Chapter 70.112

FAMILY MEDICINE—EDUCATION AND RESIDENCY PROGRAMS

Sections	
70.112.010	Definitions.
70.112.020	Education in family medical practice—Department in school of medicine—Residency programs—Financial support.
70.112.030	Family practice education advisory board—Chairman—Membership.
70.112.040	Advisory board—Terms of members—Filling vacancies.
70.112.050	Advisory board—Duties—Annual report.
70.112.060	Funding of residency programs.

70.112.010 Definitions. (1) "School of medicine" means the University of Washington school of medicine located in Seattle, Washington;

(2) "Residency programs" mean community based family practice residency educational programs either in existence or established under this chapter;

(3) "Affiliated" means established or developed in cooperation with the school of medicine;

(4) "Family practice unit" means the community facility or classroom used for training of ambulatory health skills within a residency training program; and

(5) "Advisory board" means the family practice education advisory board created by this chapter. [1975 1st ex.s. c 108 § 1.]

70.112.020 Education in family medical practice—Department in school of medicine—Residency programs—Financial support. There is established a state-wide medical education system for the purpose of

training resident physicians in family practice. The dean of the school of medicine shall be responsible for implementing the development and expansion of residency programs in cooperation with the medical profession, hospitals, and clinics located throughout the state. The chairman of the department of family medicine in the school of medicine, with the consent of the advisory board, shall determine where affiliated residency programs shall exist; giving consideration to communities in the state where the population, hospital facilities, number of physicians, and interest in medical education indicate the potential success of the residency program. The medical education system shall provide financial support for residents in training for those programs which are affiliated with the school of medicine and shall establish positions for appropriate faculty to staff these programs. The number of programs shall be determined by the board and be in keeping with the needs of the state. [1975 1st ex.s. c 108 § 2.]

70.112.030 Family practice education advisory board—Chairman—Membership. There is created a family practice education advisory board which shall consist of eight members with the dean of the school of medicine serving as chairman. Other members of the board will be:

(1) Chairman, department of family medicine, school of medicine;

(2) Two public members to be appointed by the governor;

(3) A member appointed by the Washington state medical association;

(4) A member appointed by the Washington state academy of family physicians;

(5) A hospital administrator representing those Washington hospitals with family practice residency programs, appointed by the governor; and

(6) A director representing the directors of community based family practice residency programs, appointed by the governor. [1975 1st ex.s. c 108 § 3.]

70.112.040 Advisory board—Terms of members—Filling vacancies. The dean and chairman of the department of family medicine at the University of Washington school of medicine shall be permanent members of the advisory board. Other members will be initially appointed as follows: Terms of the two public members shall be two years; the member from the medical association and the hospital administrator, three years; and the remaining two members, four years. Thereafter, terms for the nonpermanent members shall be four years; members may serve two consecutive terms; and new appointments shall be filled in the same manner as for original appointments. Vacancies shall be filled for an unexpired term in the manner of the original appointment. [1975 1st ex.s. c 108 § 4.]

70.112.050 Advisory board—Duties—Annual report. The advisory board shall advise the dean and the chairman of the department of family medicine in the implementation of the educational programs provided

for in this chapter; including, but not limited to, the selection of the areas within the state where affiliate residency programs shall exist, the allocation of funds appropriated under this chapter, and the procedures for review and evaluation of the residency programs. On or before January 15 of each year the advisory board shall provide the governor and the legislature with the report on the status of the state-wide family practice residency program. [1975 1st ex.s. c 108 § 5.]

70.112.060 Funding of residency programs. (1) The moneys appropriated for these state-wide family medicine residency programs shall be in addition to all the income of the University of Washington and its school of medicine and shall not be used to supplant funds for other programs under the administration of the school of medicine.

(2) The allocation of state funds for the residency programs shall not exceed fifty percent of the total cost of the program.

(3) No more than twenty-five percent of the appropriation for each fiscal year for the affiliated programs shall be authorized for expenditures made in support of the faculty and staff of the school of medicine who are associated with the affiliated residency programs and are located at the school of medicine.

(4) No funds for the purposes of this chapter shall be used to subsidize the cost of care incurred by patients. [1975 1st ex.s. c 108 § 6.]

Chapter 70.114

MIGRANT LABOR HOUSING

Sections

70.114.010	Legislative declaration—Fees for use of housing.
70.114.020	Migrant labor housing facility—Employment security department authorized to contract for continued operation.

70.114.010 Legislative declaration—Fees for use of housing. The legislature finds that the migrant labor housing project constructed on property purchased by the state in Yakima county should be continued until June 30, 1981. The employment security department is authorized to set day use or extended period use fees, consistent with those established by the department of parks and recreation. [1979 1st ex.s. c 79 § 1; 1977 ex.s. c 287 § 1; 1975 1st ex.s. c 50 § 1; 1974 ex.s. c 125 § 1.]

70.114.020 Migrant labor housing facility—Employment security department authorized to contract for continued operation. The employment security department is authorized to enter into such agreements and contracts as may be necessary to provide for the continued operation of the facility by a state agency, an appropriate local governmental body, or by such other entity as the commissioner may deem appropriate and in the state's best interest. [1979 1st ex.s. c 79 § 2; 1977 ex.s. c 287 § 2; 1975 1st ex.s. c 50 § 3; 1974 ex.s. c 125 § 4.]

Chapter 70.115 DRUG INJECTION DEVICES

Sections

70.115.010	Retail sale of hypodermic syringes, needles, etc. prohibited without prescription—Exceptions—Record of sales required.
70.115.020	Board of pharmacy—Rules—Destruction of device after use.
70.115.030	Board of pharmacy—Rule-making authority.
70.115.040	Violations—Penalty.
70.115.900	Severability—1977 ex.s. c 249.

70.115.010 Retail sale of hypodermic syringes, needles, etc. prohibited without prescription—Exceptions—Record of sales required. (1) No person shall sell at retail any hypodermic syringe, hypodermic needle, or any device adapted for the use of drugs by injection except upon the prescription of a physician, dentist, veterinarian, or podiatrist, or unless the sale is made to an animal control agent registered with the state board of pharmacy.

(2) Subsection (1) of this section shall not be construed as requiring a prescription where a pharmacist or physician furnishes hypodermic needles and syringes for human use in the administration of insulin or adrenaline or where a pharmacist or veterinarian or other person, firm or corporation regularly engaged in the sale of veterinarian supplies furnishes hypodermic needles and syringes for use on poultry or animals, but no needle or syringe shall be furnished to a person unknown to the furnisher or unable to properly establish his or her identity.

(3) Any person selling or furnishing a syringe, needle, or device under this section other than by prescription shall keep a record of the date of the sale or transfer, the name and address of the purchaser or transferee, proof of the purchaser or transferee's identity, and a description of the device. This record shall be open at all times to inspection by pharmacy board investigators and any law enforcement officer. [1977 ex.s. c 249 § 1.]

70.115.020 Board of pharmacy—Rules—Destruction of device after use. The state board of pharmacy shall develop and prescribe methods for the immediate destruction, after final use, of all devices regulated by this chapter in accordance with chapter 34.04 RCW. [1977 ex.s. c 249 § 2.]

70.115.030 Board of pharmacy—Rule-making authority. The state board of pharmacy may adopt any necessary rules and regulations under chapter 34.04 RCW for the implementation, continuation, or enforcement of this chapter. [1977 ex.s. c 249 § 3.]

70.115.040 Violations—Penalty. Whoever knowingly violates any provision of this chapter or any rule adopted pursuant to this chapter shall be punished by a fine of not more than five hundred dollars. [1977 ex.s. c 249 § 4.]

70.115.900 Severability—1977 ex.s. c 249. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the

chapter, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 249 § 5.]

Chapter 70.116

PUBLIC WATER SYSTEM COORDINATION ACT OF 1977

Sections

70.116.010	Legislative declaration.
70.116.020	Declaration of purpose.
70.116.030	Definitions.
70.116.040	Critical water supply service area—Designation—Establishment or amendment of external boundaries—Procedures.
70.116.050	Development of water system plans for critical water supply service areas.
70.116.060	Approval of coordinated water system plan—Limitations following approval.
70.116.070	Service area boundaries within critical water supply area.
70.116.080	Performance standards relating to fire protection.
70.116.090	Assumption of jurisdiction or control of public water system by city, town, or code city.
70.116.100	Bottled water exempt.
70.116.110	Rate making authority preserved.
70.116.120	Short title.
70.116.900	Severability—1977 ex.s. c 142.

70.116.010 Legislative declaration. The legislature hereby finds that an adequate supply of potable water for domestic, commercial, and industrial use is vital to the health and well-being of the people of the state. Readily available water for use in public water systems is limited and should be developed and used efficiently with a minimum of loss or waste.

In order to maximize efficient and effective development of the state's public water supply systems, the department of social and health services shall assist water purveyors by providing a procedure to coordinate the planning of the public water supply systems. [1977 ex.s. c 142 § 1.]

70.116.020 Declaration of purpose. The purposes of this chapter are:

(1) To provide for the establishment of critical water supply service areas related to water utility planning and development;

(2) To provide for the development of minimum planning and design standards for critical water supply service areas to insure that water systems developed in these areas are consistent with regional needs;

(3) To assist in the orderly and efficient administration of state financial assistance programs for public water systems; and

(4) To assist public water systems to meet reasonable standards of quality, quantity and pressure. [1977 ex.s. c 142 § 2.]

70.116.030 Definitions. Unless the context clearly requires otherwise, the following terms when used in this chapter shall be defined as follows:

(1) "Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future

needs of the systems and sets forth means for meeting those needs in the most efficient manner possible. Such a plan shall include provisions for subsequently updating the plan. In areas where more than one water system exists, a coordinated plan may consist of either: (a) A new plan developed for the area following its designation as a critical water supply service area; or (b) a compilation of compatible water system plans existing at the time of such designation and containing such supplementary provisions as are necessary to satisfy the requirements of this chapter. Any such coordinated plan must include provisions regarding: Future service area designations; assessment of the feasibility of shared source, transmission, and storage facilities; emergency inter-ties; design standards; and other concerns related to the construction and operation of the water system facilities.

(2) "Critical water supply service area" means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in such a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

(3) "Public water system" means any system providing water intended for, or used for, human consumption or other domestic uses. It includes, but is not limited to, the source, treatment for purifying purposes only, storage, transmission, pumping, and distribution facilities where water is furnished to any community, or number of individuals, or is made available to the public for human consumption or domestic use, but excluding water systems serving one single family residence. However, systems existing on September 21, 1977 which are owner operated and serve less than ten single family residences or which serve only one industrial plant shall be excluded from this definition and the provisions of this chapter.

(4) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates for wholesale or retail service a public water system. It also means the authorized agents of any such entities.

(5) "Secretary" means the secretary of the department of social and health services or the secretary's authorized representative.

(6) "Service area" means a specific geographical area serviced or for which service is planned by a purveyor. [1977 ex.s. c 142 § 3.]

70.116.040 Critical water supply service area—Designation—Establishment or amendment of external boundaries—Procedures. (1) The secretary and the appropriate local planning agencies and purveyors, shall study geographical areas where water supply problems related to uncoordinated planning, inadequate water quality or unreliable service appear to exist. If the results of the study indicate that such water supply problems do exist, the secretary or the county legislative authority shall designate the area involved as being a

critical water supply service area, consult with the appropriate local planning agencies and purveyors, and appoint a committee of not less than three representatives therefrom solely for the purpose of establishing the proposed external boundaries of the critical water supply service area. The committee shall include a representative from each purveyor serving more than fifty customers, the county legislative authority, county planning agency, and health agencies. Such proposed boundaries shall be established within six months of the appointment of the committee.

During the six month period following the establishment of the proposed external boundaries of the critical water supply services areas, the county legislative authority shall conduct public hearings on the proposed boundaries and shall modify or ratify the proposed boundaries in accordance with the findings of the public hearings. The boundaries shall reflect the existing land usage, and permitted densities in county plans, ordinances, and/or growth policies. If the proposed boundaries are not modified during the six month period, the proposed boundaries shall be automatically ratified and be the critical water supply service area.

After establishment of the external boundaries of the critical water supply service area, no new public water systems may be approved within the boundary area unless an existing water purveyor is unable to provide water service.

(2) At the time a critical water supply service area is established, the external boundaries for such area shall not include any fractional part of a purveyor's existing contiguous service area.

(3) The external boundaries of the critical water supply service area may be amended in accordance with procedures prescribed in subsection (1) of this section for the establishment of the critical water supply service areas when such amendment is necessary to accomplish the purposes of this chapter. [1977 ex.s. c 142 § 4.]

70.116.050 Development of water system plans for critical water supply service areas. (1) Each purveyor within the boundaries of a critical water supply service area shall develop a water system plan for the purveyor's future service area if such a plan has not already been developed: *Provided*, That nonmunicipally owned public water systems are exempt from the planning requirements of this chapter, except for the establishment of service area boundaries if they: (a) Were in existence as of September 21, 1977; and (b) have no plans for water service beyond their existing service area, and (c) meet minimum quality and pressure design criteria established by the state board of health: *Provided further*, That if the county legislative authority permits a change in development that will increase the demand for water service of such a system beyond the existing system's ability to provide minimum water service, the purveyor shall develop a water system plan in accordance with this section. The establishment of future service area boundaries shall be in accordance with RCW 70.116.070.

(2) After the boundaries of a critical water supply service area have been established pursuant to RCW

70.116.040, the committee established in RCW 70.116.040 shall participate in the development of a coordinated water system plan for the designated area. Such a plan shall incorporate all water system plans developed pursuant to subsection (1) of this section. The plan shall provide for maximum integration and coordination of public water system facilities consistent with the protection and enhancement of the public health and well-being.

(3) Those portions of a critical water supply service area not yet served by a public water system shall have a coordinated water system plan developed by existing purveyors based upon permitted densities in county plans, ordinances, and/or growth policies for a minimum of five years beyond the date of establishment of the boundaries of the critical water supply service area.

(4) To insure that the plan incorporates the proper designs to protect public health, the secretary shall adopt regulations pursuant to chapter 34.04 RCW concerning the scope and content of coordinated water system plans, and shall ensure, as minimum requirements, that such plans:

(a) Are reviewed by the appropriate local governmental agency to insure that the plan is not inconsistent with the land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects.

(b) Recognize all water resource plans, water quality plans, and water pollution control plans which have been adopted by units of local, regional, and state government.

(c) Incorporate the fire protection standards developed pursuant to RCW 70.116.080.

(d) Identify the future service area boundaries of the public water system or systems included in the plan within the critical water supply service area.

(e) Identify feasible emergency inter-ties between adjacent purveyors.

(5) If a "water general plan" for a critical water supply service area or portion thereof has been prepared pursuant to chapter 36.94 RCW and such a plan meets the requirements of subsections (1) and (4) of this section, such a plan shall constitute the coordinated water system plan for the applicable geographical area.

(6) Prior to the submission of a coordinated water system plan to the secretary for approval of the design of the proposed facilities pursuant to RCW 70.116.060, the plan shall be reviewed for consistency with subsection (4) of this section by the legislative authorities of the counties in which the critical water supply service area is located. If within sixty days of receipt of the plan, the legislative authorities find any segment of a proposed service area of a purveyor's plan or any segment of the coordinated water system plan to be inconsistent with any current land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects, the secretary shall not approve that portion of the plan until the inconsistency is resolved between the local government and the purveyor. If no comments have been received from the legislative

authorities within sixty days of receipt of the plan, the secretary may consider the plan for approval. [1977 ex.s. c 142 § 5.]

70.116.060 Approval of coordinated water system plan—Limitations following approval. (1) A coordinated water system plan shall be submitted to the secretary for design approval within two years of the establishment of the boundaries of a critical water supply service area.

(2) The secretary shall not approve those portions of a coordinated water system plan which fail to meet the requirements for future service area boundaries as set forth in RCW 70.116.070.

(3) Following the approval of a coordinated water system plan by the secretary:

(a) All purveyors constructing or proposing to construct public water system facilities within the area covered by the plan shall comply with the plan.

(b) No other purveyor shall establish a public water system within the area covered by the plan, unless the secretary determines that existing purveyors are unable to provide the service. If such a determination is made, the secretary may require the new public water system to be constructed in accordance with the construction standards and specifications embodied in the coordinated water system plan approved for the area.

(4) The secretary may deny proposals to establish or to expand any public water system within a critical water supply service area for which there is not an approved coordinated water system plan at any time after two years of the establishment of the critical water supply service area: *Provided*, That service connections shall not be considered expansions. [1977 ex.s. c 142 § 6.]

70.116.070 Service area boundaries within critical water supply area. (1) The service area boundaries of public water systems within the critical water supply service area shall be determined by written agreement among the purveyors and with the approval of the appropriate legislative authority. Failure of the legislative authority to file with the secretary objections to the proposed service area boundaries within sixty days of receipt of the proposed boundary agreement may be construed as approval of the agreement.

(2) If no service area boundary agreement has been established within a reasonable period of time, or if the legislative authority has filed with the secretary objections in writing as provided in subsection (1) of this section, the secretary shall hold a public hearing thereon. The secretary shall provide notice of the hearing by certified mail to each purveyor providing service in the critical water supply service area, to each county legislative authority having jurisdiction in the area and to the public. The secretary shall provide public notice pursuant to the provisions of chapter 65.16 RCW. Such notice shall be given at least twenty days prior to the hearing. The hearing may be continued from time to time and, at the termination thereof, the secretary may restrict the expansion of service of any purveyor within the area if

the secretary finds such restriction is necessary to provide the greatest protection of the public health and well-being. [1977 ex.s. c 142 § 7.]

70.116.080 Performance standards relating to fire protection. The secretary shall adopt performance standards relating to fire protection to be incorporated into the design and construction of public water systems. The standards shall be consistent with recognized national standards. The secretary shall adopt regulations pertaining to the application and enforcement of the standards: *Provided*, That the regulations shall require the application of the standards for new and expanding systems only. The standards shall apply in critical water supply service areas unless the approved coordinated plan provides for nonfire flow systems. [1977 ex.s. c 142 § 8.]

70.116.090 Assumption of jurisdiction or control of public water system by city, town, or code city. The assumption of jurisdiction or control of any public water system or systems by a city, town, or code city, shall be subject to the provisions of chapter 35.13A RCW, and the provisions of this chapter shall be superseded by the provisions of chapter 35.13A RCW regarding such an assumption of jurisdiction. [1977 ex.s. c 142 § 9.]

70.116.100 Bottled water exempt. Nothing in this chapter shall apply to water which is bottled or otherwise packaged in a container for human consumption or domestic use, or to the treatment, storage and transportation facilities used in the processing of the bottled water or the distribution of the bottles or containers of water. [1977 ex.s. c 142 § 10.]

70.116.110 Rate making authority preserved. Nothing in this chapter shall be construed to alter in any way the existing authority of purveyors and municipal corporations to establish, administer and apply water rates and rate provisions. [1977 ex.s. c 142 § 11.]

70.116.120 Short title. This chapter shall be known and may be cited as the "Public Water System Coordination Act of 1977". [1977 ex.s. c 142 § 12.]

70.116.900 Severability—1977 ex.s. c 142. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 142 § 13.]

Chapter 70.117

SKIING AND COMMERCIAL SKI ACTIVITY

Sections

70.117.010	Ski area sign requirements.
70.117.020	Standard of conduct—Prohibited acts—Responsibility.
70.117.030	Leaving scene of skiing accident—Penalty.
70.117.040	Insurance requirements for operators.

Ski lifts, tows, etc.: Chapter 70.88 RCW.

70.117.010 Ski area sign requirements. (1) The operator of any ski area shall maintain a sign system.

All signs for instruction of the public shall be bold in design with wording short, simple, and to the point. All such signs shall be prominently placed.

Entrances to all machinery, operators', and attendants' rooms shall be posted to the effect that unauthorized persons are not permitted therein.

The sign "Men Working on Lift" or a similar warning sign shall be hung on the main disconnect switch and at control points for starting the auxiliary or prime mover when men are working on the passenger tramway.

(2) The interior of each reversible aerial tramway and gondola lift shall be prominently posted to show:

(a) The maximum capacity of each reversible aerial tramway and gondola lift in pounds and number of passengers (which shall also be posted at each loading area); and

(b) Instructions for procedure in emergencies.

(3) The following signs shall be posted at all aerial lifts except gondola lifts:

(a) "Prepare to Unload" (not less than fifty feet ahead of unloading area);

(b) "Keep Ski Tips Up" (ahead of any point where skis may come in contact with a platform or the snow surface);

(c) "Unload Here";

(d) "Safety Gate" (if applicable);

(e) "Remove Pole Straps from Wrists" (at loading area); and

(f) Sign visible at all points of downhill loading, listing downhill capacity of lift.

(4) The following signs shall be posted at all surface lifts:

(a) "Prepare to Unload" (not less than fifty feet ahead of unloading area);

(b) "Stay in Track";

(c) "Unload Here";

(d) "Safety Gate"; and

(e) "Remove Pole Straps from Wrists" (at loading area).

(5) The following signs shall be posted at all tows:

(a) "No Loose Scarves
No Loose Clothing
No Long Hair Exposed"
(at loading area);

(b) "Stay in Track";

(c) "Unload Here"; and

(d) "Safety Gate".

(6) All signs required for normal daytime operation shall be in place, and those pertaining to the tramway, lift, or tow operations shall be adequately lighted for night skiing.

(7) If a particular trail or slope has been closed to the public by an operator, the operator shall place a notice thereof at the top of the trail or slope involved, and no person shall ski on a slope or trail which has been designated "Closed".

(8) An operator shall place a notice at the embarking terminal or terminals of a lift or tow which has been closed that the lift or tow has been closed and that a

person embarking on such a lift or tow shall be considered to be a trespasser.

(9) An operator shall prominently place a notice containing the substance of RCW 70.117.030 in such places as are necessary to notify the public.

(10) Any snow making machines or equipment shall be clearly visible and clearly marked.

(11) The operator of any ski area shall maintain a readily visible sign on each rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device, advising the users of the device that:

(a) Any person not familiar with the operation of the lift shall ask the operator thereof for assistance and/or instruction; and

(b) The skiing-ability level recommended for users of the lift and the slopes served by the device shall be classified "easiest", "more difficult", and "most difficult". [1977 ex.s. c 139 § 1.]

70.117.020 Standard of conduct—Prohibited acts—Responsibility. (1) In addition to the specific requirements of this section, all skiers shall conduct themselves within the limits of their individual ability and shall not act in a manner that may contribute to the injury of themselves or any other person.

(2) No person shall:

(a) Embark or disembark upon a ski lift except at a designated area;

(b) Throw or expel any object from any tramway, ski lift, commercial skimobile, or other similar device while riding on the device;

(c) Act in any manner while riding on a rope tow, wire rope tow, j-bar, t-bar, ski lift, or similar device that may interfere with the proper or safe operation of the lift or tow;

(d) Wilfully engage in any type of conduct which may injure any person, or place any object in the uphill ski track which may cause another to fall, while traveling uphill on a ski lift; or

(e) Cross the uphill track of a j-bar, t-bar, rope tow, wire rope tow, or other similar device except at designated locations.

(3) Every person shall maintain control of his or her speed and course at all times, and shall stay clear of any snowgrooming equipment, any vehicle, any lift tower, and any other equipment on the mountain. Snowgrooming equipment or any other vehicles shall be equipped with a flashing yellow light at any time the vehicle is moving on or in the vicinity of a ski run.

(4) A person shall be the sole judge of his or her ability to negotiate any trail, slope, or uphill track and no action shall be maintained against any operator by reason of the condition of the track, trail, or slope unless the condition results from the negligence of the operator.

(5) Any person who boards a rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device shall be presumed to have sufficient abilities to use the lift. No liability shall attach to any operator or attendant for failure to instruct the person on the use of the device, but a person shall follow any written or verbal instructions that are given regarding the use.

(6) Because of the inherent risk in the sport of skiing all persons using the ski hill shall exercise reasonable care for their own safety. However, the primary duty shall be on the person skiing downhill to avoid any collision with any person or object below him or her.

(7) Subsection (6) of this section notwithstanding, any person skiing on other than improved trails or slopes within the area shall be responsible for any injuries or losses resulting from his or her action.

(8) Subsections (6) and (7) of this section notwithstanding, any person on foot or on any type of sliding device shall be responsible for any collision whether the collision is with another person or with an object.

(9) A person embarking on a lift or tow without authority shall be considered to be a trespasser. [1977 ex.s. c 139 § 2.]

70.117.030 Leaving scene of skiing accident—Penalty. Any person who is involved in a skiing accident and who departs from the scene of the accident without leaving personal identification or otherwise clearly identifying himself or herself before notifying the proper authorities or obtaining assistance, knowing that any other person involved in the accident is in need of medical or other assistance, shall be guilty of a misdemeanor. [1977 ex.s. c 139 § 3.]

70.117.040 Insurance requirements for operators. (1) Every tramway, ski lift, or commercial skimobile operator shall maintain liability insurance of not less than one hundred thousand dollars per person per accident and of not less than two hundred thousand dollars per accident.

(2) Every operator of a rope tow, wire rope tow, j-bar, t-bar, or similar device shall maintain liability insurance of not less than twenty-five thousand dollars per person per accident and of not less than fifty thousand dollars per accident.

(3) This section shall not apply to operators of tramways that are not open to the general public and that are operated without charge, except that this section shall apply to operators of tramways that are operated by schools, ski clubs, or similar organizations. [1977 ex.s. c 139 § 4.]

Chapter 70.118

ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

70.118.010	Legislative declaration.
70.118.020	Definitions.
70.118.030	Local boards of health—Duties.
70.118.040	Local boards of health—Authority to waive sections of local plumbing and/or building codes.

70.118.010 Legislative declaration. The legislature finds that over one million, two hundred thousand persons in the state are not served by sanitary sewers and that they must rely on septic tank systems. The failure of large numbers of such systems has resulted in significant health hazards, loss of property values, and water quality degradation. The legislature further finds that failure of such systems could be reduced by utilization of

nonwater-carried sewage disposal systems, or other alternative methods of effluent disposal, as a correctional measure. Waste water volume diminution and disposal of most of the high bacterial waste through composting or other alternative methods of effluent disposal would result in restorative improvement or correction of existing substandard systems. [1977 ex.s. c 133 § 1.]

70.118.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Nonwater-carried sewage disposal devices" means any device that stores and treats nonwater-carried human urine and feces.

(2) "Alternative methods of effluent disposal" means systems approved by the department of social and health services, including at least, mound systems, alternating drain fields, anaerobic filters, evapotranspiration systems, and aerobic systems.

(3) "Failure" means: (a) Effluent has been discharged on the surface of the ground prior to approved treatment; or (b) effluent has percolated to the surface of the ground; or (c) effluent has contaminated or threatens to contaminate a ground water supply. [1977 ex.s. c 133 § 2.]

70.118.030 Local boards of health—Duties. Local boards of health shall identify failing septic tank drain-field systems in the normal manner and will use reasonable effort to determine new failures. Discretionary judgment will be made in implementing corrections by specifying nonwater-carried sewage disposal devices or other alternative methods of treatment and effluent disposal as a measure of ameliorating existing substandard conditions. Local regulations shall be consistent with the intent and purposes stated herein. [1977 ex.s. c 133 § 3.]

70.118.040 Local boards of health—Authority to waive sections of local plumbing and/or building codes. With the advice of the secretary of the department of social and health services, local boards of health are hereby authorized to waive applicable sections of local plumbing and/or building codes that might prohibit the use of an alternative method for correcting a failure. [1977 ex.s. c 133 § 4.]

Chapter 70.119

PUBLIC WATER SUPPLY SYSTEMS— CERTIFICATION AND REGULATION OF OPERATORS

Sections

70.119.010	Legislative declaration.
70.119.020	Definitions.
70.119.030	Certified operators required for certain public water supply systems.
70.119.040	Exclusions from chapter.
70.119.050	Rules and regulations—Secretary to adopt.
70.119.060	Public water supply systems—Secretary to categorize.
70.119.070	Secretary—Consideration of guidelines.
70.119.080	Water and wastewater operator certification board of examiners—Additional members—Additional powers and duties.

70.119.090	Certificates without examination—Conditions.
70.119.100	Certificates—Issuance and renewal—Conditions.
70.119.110	Certificates—Grounds for revocation.
70.119.120	Secretary—Powers and duties.
70.119.130	Violations—Penalties.
70.119.140	Certificates—Reciprocity with other states.
70.119.150	Disposition of receipts.
70.119.900	Effective date—1977 ex.s. c 99.

70.119.010 Legislative declaration. The legislature declares that competent operation of a public water supply system is necessary for the protection of the consumers' health, and therefore it is of vital interest to the public. In order to protect the public health and conserve and protect the water resources of the state, it is necessary to provide for the classifying of all public water supply systems; to require the examination and certification of the persons responsible for the supervision and operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1977 ex.s. c 99 § 1.]

70.119.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Board" means the board established pursuant to RCW 70.95B.070 which shall be known as the water and waste water operator certification board of examiners.

(2) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

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

(4) "Distribution system" means that portion of a public water supply system which stores, transmits, pumps and distributes water to consumers.

(5) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(6) "Operator" means an individual employed or appointed by any county, water district, municipality, public or private corporation, company, institution, person, or the state of Washington who is designated by the employing or appointing officials to operate or assist in the operation of a water purification plant or distribution system.

(7) "Public water supply system" means any water supply system intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission and distribution facilities where water is furnished to any community or group of individuals, or is made available to the public for human consumption or domestic use, but excluding all water supply systems serving one single family residence.

(8) "Purification plant" means that portion of a public water supply system which treats or improves the

physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(9) "Secretary" means the secretary of the department of social and health services. [1977 ex.s. c 99 § 2.]

70.119.030 Certified operators required for certain public water supply systems. (1) All public water supply systems which serve either:

(a) One hundred services in use at any one time; or

(b) Twenty-five or more persons which are supplied from a stream, lake or other surface water supply source and which are required by law to use a water filtration system;

are required to have a certified operator designated by the employing or appointing official as the person responsible for active daily technical direction and supervision. The certified operators shall be in charge of the technical direction and supervision of a public water system's operation, or an operating shift of such a system, or a major segment of a system necessary for monitoring or improving the quality of water. The operator shall be certified as provided in RCW 70.119.050.

(2) The amount of time that a certified operator shall be required to be present shall be based upon the time required to properly operate and maintain the public water supply system as designed and constructed in accordance with RCW 43.20.050.

(3) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1977 ex.s. c 99 § 3.]

70.119.040 Exclusions from chapter. Nothing in this chapter shall apply to:

(1) Industrial water supply systems which do not supply water to residences for domestic use and are under the jurisdictional requirements of the Washington Industrial Safety and Health Act of 1973, chapter 49.17 RCW, as now or hereafter amended; or

(2) The preparation, distribution, or sale of bottled water or water similarly packaged. [1977 ex.s. c 99 § 4.]

70.119.050 Rules and regulations—Secretary to adopt. The secretary shall adopt, with the approval of the board, such rules and regulations as may be necessary for the administration of this chapter and shall enforce such rules and regulations. The rules and regulations shall include provisions establishing minimum qualifications and procedures for the certification of operators, criteria for determining the kind and nature of continued professional growth required for renewal of certification under RCW 70.119.100(2), and provisions for classifying water purification plants and distribution systems.

Rules and regulations adopted under the provisions of this section shall be adopted in accordance with the provisions of chapter 34.04 RCW. [1977 ex.s. c 99 § 5.]

70.119.060 Public water supply systems—Secretary to categorize. The secretary shall further categorize all public water supply systems with regard to the size,

type, source of water, and other relevant physical conditions affecting purification plants and distribution systems to assist in identifying the skills, knowledge and experience required for the certification of operators for each category of such systems. [1977 ex.s. c 99 § 6.]

70.119.070 Secretary—Consideration of guidelines. The secretary is authorized, when taking action pursuant to RCW 70.119.050 and 70.119.060, to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1977 ex.s. c 99 § 7.]

70.119.080 Water and wastewater operator certification board of examiners—Additional members—Additional powers and duties. For the purpose of carrying out the provisions of this chapter, the membership of the water and wastewater operator certification board of examiners established under RCW 70.95B.070, shall, pursuant to RCW 70.95B.070:

(1) Be expanded to include two waterworks operators; and

(2) Serve in a common capacity for the certification of both water and wastewater plant and system operators.

In addition to the powers and duties in RCW 70.95B.070, the board shall assist in the development of rules and regulations implementing this chapter, shall prepare, administer and evaluate examinations of operator competency as required in this chapter, and shall recommend the issuance or revocation of certificates. The board shall determine where and when the examinations shall be held. Such examinations shall be held at least three times annually. [1977 ex.s. c 99 § 8.]

70.119.090 Certificates without examination—Conditions. Certificates shall be issued without examination under the following conditions:

(1) Certificates shall be issued without application fee to operators who, on the effective date of this act, hold certificates of competency attained under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest section of the American water works association.

(2) Certification shall be issued to persons certified by a governing body or owner of a public water supply system to have been the operators of a purification plant or distribution system on the effective date of this chapter but only to those who are required to be certified under RCW 70.119.030(1). A certificate so issued shall be conditioned to be valid only for operating the existing plant or system.

(3) A nonrenewable certificate, temporary in nature, may be issued to an operator for a period not to exceed twelve months to fill a vacated position required to have a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1977 ex.s. c 99 § 9.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

70.119.100 Certificates—Issuance and renewal—Conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) Except as provided in RCW 70.119.090, a certificate shall be issued if the operator has satisfactorily passed a written examination, has paid the department an application fee of ten dollars, and has met the requirements specified in the rules and regulations as authorized by this chapter.

(2) The terms for all certificates shall be for one year from the date of issuance. Every certificate shall be renewed annually upon the payment of a five dollar renewal fee and satisfactory evidence presented to the secretary that the operator demonstrates continued professional growth in the field.

(3) The secretary shall notify operators who fail to renew their certificates before the end of the certificate year that their certificates are temporarily valid for two months following the end of the certificate year. Certificates not renewed during the two month period shall be invalid and the secretary shall so notify the holders of such certificates.

(4) An operator who has failed to renew a certificate pursuant to the provisions of this section, may reapply for certification and the secretary may require the operator to meet the requirements established for new applicants. [1977 ex.s. c 99 § 10.]

70.119.110 Certificates—Grounds for revocation. The secretary may, with the recommendation of the board and after hearing before the same, revoke a certificate found to have been obtained by fraud or deceit; or for gross negligence in the operation of a purification plant or distribution system; or for violating the requirements of this chapter or any lawful rules, order, or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation. [1977 ex.s. c 99 § 11.]

70.119.120 Secretary—Powers and duties. To carry out the provisions and purposes of this chapter, the secretary is authorized and empowered to:

(1) Receive financial and technical assistance from the federal government and other public or private agencies.

(2) Participate in related programs of the federal government, other state, interstate agencies, or other public or private agencies or organizations. [1977 ex.s. c 99 § 12.]

70.119.130 Violations—Penalties. On or after one year following the effective date of this act, any person, including any operator or any firm, association, corporation, municipal corporation, or other governmental subdivision or agency who, after thirty days' written notice, operates a public water supply system which is not in compliance with RCW 70.119.030(1), shall be guilty of a misdemeanor. Each day of such operation out of compliance with RCW 70.119.030(1) shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each

offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereunder: *Provided*, That, except in the case of fraud, deceit, or gross negligence under RCW 70.119.110, no revocation, citation or charge shall be made under RCW 70.119.110 and 70.119.130 until a proper written notice of violation is received and a reasonable opportunity for correction has been given. [1977 ex.s. c 99 § 13.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

70.119.140 Certificates—Reciprocity with other states. Operators certified by any state under provisions that, in the judgment of the secretary, are substantially equivalent to the requirements of this chapter and any rules and regulations promulgated hereunder, may be issued, upon application, a certificate without examination.

In making determinations pursuant to this section, the secretary shall consult with the board and may consider any generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1977 ex.s. c 99 § 14.]

70.119.150 Disposition of receipts. All receipts realized in the administration of this chapter shall be paid into the general fund. [1977 ex.s. c 99 § 15.]

70.119.900 Effective date—1977 ex.s. c 99. This act shall take effect on January 1, 1978. [1977 ex.s. c 99 § 17.]

Chapter 70.120

MOTOR VEHICLE EMISSION CONTROL

Sections

70.120.010	Definitions.
70.120.020	Programs.
70.120.030	Vehicle standards—Testing equipment.
70.120.040	Noncompliance areas—Inspections, fees.
70.120.050	Noncompliance areas—Annual review.
70.120.060	Vehicle inspections—Results—Certificate of compliance.
70.120.070	Vehicle inspections—Failed—Certificate of acceptance.
70.120.080	Vehicle inspections—Fleets.
70.120.090	Vehicle inspections—Used car dealers.
70.120.100	Vehicle inspections—Complaints.
70.120.110	Vehicle inspections—Violations.
70.120.120	Rules.
70.120.130	Authority.

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

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3) "Fleet" means a group of twenty-five or more motor vehicles owned or leased concurrently by one person.

(4) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16 RCW.

(5) "Motor vehicle dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(6) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(7) The terms "air contaminant," "air pollution," "air quality standard," "ambient air," "emission," and "emission standard" have the meanings given them in RCW 70.94.030. [1979 1st ex.s. c 163 § 1.]

Expiration date—1979 1st ex.s. c 163: "This act as it now exists or is hereafter amended shall expire on January 1, 1990, unless extended by law for an additional fixed period of time." [1979 1st ex.s. c 163 § 17.]

Severability—1979 1st ex.s. c 163: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 1st ex.s. c 163 § 19.]

70.120.020 Programs. (1) The department shall conduct the following programs in a manner that will enhance the successful implementation of the air pollution control system established for motor vehicles by this chapter:

(a) A voluntary motor vehicle emissions inspection program;

(b) A public educational program regarding the health effects of air pollution emitted by motor vehicles; the purpose, operation, and effect of emission control devices and systems; and the effect that proper maintenance of motor vehicle engines has on fuel economy and air pollution emission; and

(c) A public notification program identifying the geographic areas of the state that are designated as being noncompliance areas and emission contributing areas and describing the requirements imposed under this chapter for those areas.

(2) (a) The department, the superintendent of public instruction, and the state board for community college education shall develop cooperatively, after consultation with automotive trades joint apprenticeship committees approved in accordance with RCW 49.04.040, a program for granting certificates of instruction to persons who successfully complete a course of study, under general requirements established by the director, in the maintenance of motor vehicle engines, the use of engine and exhaust analysis equipment, and the repair and maintenance of emission control devices.

(b) The department shall make available to the public a list of those persons who have received certificates of instruction under subsection (2)(a) of this section. [1979 1st ex.s. c 163 § 2.]

Expiration date—**Severability**—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.030 Vehicle standards—Testing equipment.

(1) The director shall adopt motor vehicle emission standards. The standards adopted shall ensure that no less than seventy percent of the vehicles tested annually comply with the standards on the first inspection conducted for the vehicles under this chapter each year. The

standards shall be adopted as rules in accordance with chapter 34.04 RCW.

(2) The director shall adopt rules for conducting emission tests for motor vehicles.

(3) The director shall adopt air quality standards for air contaminants from the emissions of motor vehicles. The standards shall be adopted as rules and may not be more stringent than those established for the contaminants by the United States environmental protection agency as in effect on September 1, 1979, to implement the federal clean air act.

(4) The director shall adopt, by rule, criteria for calibrating emission testing equipment, including, but not limited to, those identifying standard calibration gas mixtures.

(5) The director shall require that the electronic equipment utilized to test emissions at any station established pursuant to RCW 70.120.040(5) or authorized pursuant to RCW 70.120.080 or 70.120.090 be properly calibrated.

The department shall examine frequently the calibration of the emission testing equipment used at such stations. [1979 1st ex.s. c 163 § 3.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.040 Noncompliance areas—Inspections, fees. (1) The director shall designate a geographic area as being a "noncompliance area" for motor vehicle emissions if:

(a) Prior to December 31, 1982, analysis of the data recorded at the monitoring sites indicates that an air quality standard established pursuant to this chapter will probably be exceeded after December 31, 1982; or

(b) On or after December 31, 1982, the department's analysis of the data recorded at the monitoring sites indicates that such a standard will probably be exceeded, and if the department determines that the primary source of the contaminant being monitored at the sites is motor vehicle emissions: *Provided*, That the department's analysis may not be based upon data recorded at an air monitoring site for less than one year.

(2) The department shall analyze information regarding the motor vehicle traffic in a noncompliance area to determine the smallest land area, which shall include the noncompliance area, within whose boundaries are registered motor vehicles that contribute significantly to the violation of motor vehicle related air quality standards in the noncompliance area. The director shall declare such an area to be an emission contributing area.

(3) In establishing the external boundaries of an emission contributing area, the director shall utilize the boundaries established for zip code service areas by the United States postal service.

The director shall designate areas as being noncompliance areas or emission contributing areas, and shall establish the boundaries of such areas, by rule. Notwithstanding the provisions of chapter 34.04 RCW, a rule which would designate such an area or establish or modify the boundary of such an area may not be adopted until it has been submitted to the standing

committees on ecology of the house of representatives and the senate for review and approval: *Provided*, That the standing committees shall take into account alternative plans for traffic re-routing and traffic bans that may have been prepared by local municipal corporations for the purpose of satisfying federal emission guidelines.

(4) The department shall administer an emission inspection system for all motor vehicles registered within the boundaries of each such emission contributing area.

(5) The director shall authorize, by contract, one or more individuals, firms, private corporations, associations or partnerships to establish and operate inspection stations for conducting the vehicle emission tests authorized by this chapter: *Provided*, That no person engaged in the inspection of motor vehicles pursuant to subsection (5) of this section shall perform for compensation repairs on any vehicles. No public body may establish or operate such contracted inspection stations. Any such contract shall be let in accordance with the procedures established for competitive bids in chapter 43.19 RCW.

(6) The provisions of subsection (5) of this section apply to inspections conducted pursuant to this section. Those provisions also apply to inspections conducted pursuant to RCW 70.120.020(1)(a) except when the inspections are conducted for the following purposes:

- (a) Auditing;
- (b) Contractor evaluation;
- (c) Collection of data for establishing calibration and performance standards;
- (d) Public information and education; and
- (e) Providing a voluntary inspection program if sufficient contractors may not be obtained for the program at a reasonable cost by January 1, 1981.

(7) The fee to be charged for emission inspections conducted pursuant to this section shall be established by the director by rule. The inspection fee shall be a standard fee applicable state-wide and shall be no greater than ten dollars. [1979 1st ex.s. c 163 § 4.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.050 Noncompliance areas—Annual review. (1) The director shall review annually the air quality and forecasted air quality of each area in the state designated as a "noncompliance area" for motor vehicle emissions.

(2) If the director determines that:

(a) The air quality standards for contaminants derived from motor vehicle emissions are no longer being violated in the "noncompliance area"; and

(b) Those standards would not be violated in the "noncompliance area" if the emission inspection system established in the emission contributing area for the "noncompliance area" in accordance with RCW 70.120.040(4) were discontinued and the requirements of RCW 46.16.015 no longer applied to the area, the area shall no longer be designated as a "noncompliance area" for motor vehicle emissions. [1979 1st ex.s. c 163 § 5.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.060 Vehicle inspections—Results—Certificate of compliance. Any person whose motor vehicle is inspected at an inspection station authorized by the director pursuant to RCW 70.120.040(5) shall receive the results of the inspection test. If the inspected vehicle's emissions comply with the standards established by the director, the person shall receive a dated certificate of compliance and shall pay an inspection fee at the time of inspection. [1979 1st ex.s. c 163 § 6.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.070 Vehicle inspections—Failed—Certificate of acceptance. Any person:

(1) Whose motor vehicle is tested pursuant to RCW 70.120.060 and fails to comply with the emission standards established for the vehicle;

(2) Who, following such a test, expends more than fifty dollars for repairs and/or parts solely devoted to meeting the emission standards; and

(3) Whose vehicle is inspected again but again fails, may be issued a certificate of acceptance by the department. To receive the certificate, the person must document the expenditure and the purpose of the expenditure to the satisfaction of the department and must pay the inspection fee established under RCW 70.120.040(7). [1979 1st ex.s. c 163 § 7.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.080 Vehicle inspections—Fleets. The director may authorize an owner or lessee of a fleet of motor vehicles, or the owner's or lessee's agent, to inspect the vehicles in the fleet and issue certificates of compliance for the vehicles in the fleet if the director determines that: (1) The director's emission and inspection standards will be complied with; and (2) certificates will be issued only to vehicles in the fleet and only when appropriate. [1979 1st ex.s. c 163 § 8.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.090 Vehicle inspections—Used car dealers. The director may authorize a motor vehicle dealer, selling used motor vehicles, to inspect the vehicles owned and being offered for sale by that dealer and issue certificates of compliance for the vehicles if the director determines that: The director's emission and inspection standards will be complied with; and certificates will be issued only when appropriate. [1979 1st ex.s. c 163 § 9.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.100 Vehicle inspections—Complaints. The department shall investigate complaints received regarding the operation of emission testing stations and shall require corrections or modifications in those operations when deemed necessary.

The department shall also review complaints received regarding the maintenance or repairs secured by owners of motor vehicles for the purpose of complying with the

requirements of this chapter. When possible, the department shall assist such owners in determining the merits of the complaints. [1979 1st ex.s. c 163 § 10.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.110 Vehicle inspections—Violations. Certificates of compliance and acceptance constitute official forms. False statements made thereon or made to secure such certificates are punishable pursuant to RCW 9A.72.040 and the certificates shall bear notice to that effect.

Certificates of compliance and certificates of acceptance may be issued only in the manner authorized by RCW 70.120.060, 70.120.070, 70.120.080, and 70.120.090. [1979 1st ex.s. c 163 § 12.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.120 Rules. The director of the department of ecology shall adopt rules implementing and enforcing RCW 70.120.010 through 70.120.100, 46.16.015(2)(g) and 70.120.110 in accordance with chapter 34.04 RCW. Notwithstanding the provisions of chapter 34.04 RCW, any rule implementing and enforcing RCW 70.120.010 through 70.120.100, 46.16.015(2)(g), and 70.120.110 may not be adopted until it has been submitted to the standing committees on ecology of the house of representatives and senate for review and approval. [1979 1st ex.s. c 163 § 13.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

70.120.130 Authority. The authority granted by this chapter to the director and the department for controlling vehicle emissions is supplementary to the department's authority to control air pollution pursuant to chapter 70.94 RCW. [1979 1st ex.s. c 163 § 14.]

Expiration date—Severability—1979 1st ex.s. c 163: See notes following RCW 70.120.010.

Chapter 70.121

MILL TAILINGS—LICENSING AND PERPETUAL CARE

Sections	
70.121.010	Legislative findings.
70.121.020	Definitions.
70.121.030	Licenses—Renewal—Hearings.
70.121.040	Facility operations and decommissioning—Monitoring.
70.121.050	Radiation perpetual maintenance fund—Licensee contributions—Disposition.
70.121.060	State authority to acquire property for surveillance sites.
70.121.070	Status of acquired state property for surveillance sites.
70.121.080	Payment for transferred sites for surveillance.
70.121.090	Authority for on-site inspections and monitoring.
70.121.100	Licenses' bond requirements.
70.121.110	Acceptable bonds.
70.121.120	Forfeited bonds—Use of fund.
70.121.130	Exemptions from bonding requirements.
70.121.900	Construction.

70.121.905 Short title.
70.121.910 Severability—1979 1st ex.s. c 110.

70.121.010 Legislative findings. The legislature finds that:

(1) The milling of uranium and thorium creates potential hazards to the health of the citizens of the state of Washington in that potentially hazardous radioactive isotopes, decay products of uranium and thorium, naturally occurring in relatively dispersed geologic formations, are brought to one location on the surface and pulverized in the process of mining and milling uranium and thorium.

(2) These radioactive isotopes, in addition to creating a field of gamma radiation in the vicinity of the tailings area, also exude potentially hazardous radioactive gas and particulates into the atmosphere from the tailings areas, and contaminate the milling facilities, thereby creating hazards which will be present for many generations.

(3) The public health and welfare of the citizens demands that the state assure that the public health be protected by requiring that: (a) prior to the termination of any radioactive materials license, all milling facilities and associated tailings piles will be decommissioned in such a manner as to bring the potential public health hazard to a minimum; and (b) such environmental radiation monitoring as is necessary to verify the status of decommissioned facilities will be conducted. [1979 1st ex.s. c 110 § 1.]

Effective date—1979 1st ex.s. c 110: "This act shall take effect on January 1, 1980." [1979 1st ex.s. c 110 § 18.]

70.121.020 Definitions. Unless the context clearly requires a different meaning, the definitions in this section apply throughout this chapter.

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

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

(3) "Site" means the restricted area as defined by the United States nuclear regulatory commission.

(4) "Tailings" means the residue remaining after extraction of uranium or thorium from the ore whether or not the residue is left in piles, but shall not include ore bodies nor ore stock piles.

(5) "License" means a radioactive materials license issued under chapter 70.98 RCW and the rules adopted under chapter 70.98 RCW.

(6) "Termination of license" means the cancellation of the license after permanent cessation of operations. Temporary interruptions or suspensions of production due to economic or other conditions are not a permanent cessation of operations. [1979 1st ex.s. c 110 § 2.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.030 Licenses—Renewal—Hearings. (1) Any person who proposes to operate a uranium or thorium mill within the state of Washington after January 1, 1980, shall obtain a license from the department to mill thorium and uranium. The period of the license

shall be determined by the secretary and shall be initially valid for not more than two years and renewable thereafter for periods of not more than five years. No license may be granted unless:

(a) The owner or operator of the mill submits to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill agrees to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(2) Any person operating a uranium or thorium mill on January 1, 1980, shall, at the time of application for renewal of his license to mill thorium or uranium, comply with the following conditions for continued operation of the mill:

(a) The owner or operator of the mill shall submit to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill shall agree to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(3) The department shall, after public notice and opportunity for written comment, hold a public hearing to consider the adequacy of the proposed plan to protect the safety and health of the public required by subsections (1) and (2) of this section. The proceedings shall be recorded and transcribed. The public hearing shall provide the opportunity for cross-examination by both the department and the person proposing the plan required under this section. The department shall make a written determination as to the licensing of the mill which is based upon the findings included in the determination and upon the evidence presented during the public comment period. The determination is subject to judicial review. If a declaration of nonsignificance is issued for a license renewal application under rules adopted under chapter 43.21C RCW, the public hearing is not required.

(4) The department shall set a schedule of license and amendment fees predicated on the cost of reviewing the license application and of monitoring for compliance with the conditions of the license. A permit for construction of a uranium or thorium mill may be granted by the secretary prior to licensing. [1979 1st ex.s. c 110 § 3.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.040 Facility operations and decommissioning—Monitoring. The secretary or his representative shall monitor the operations of the mill for compliance

with the conditions of the license by the owner or operator. The mill owner or operator shall be responsible for compliance, both during the lifetime of the facility and at shutdown, including but not limited to such requirements as fencing and posting the site; contouring, covering, and stabilizing the pile; and for decommissioning the facility. [1979 1st ex.s. c 110 § 4.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.050 Radiation perpetual maintenance fund—Licensee contributions—Disposition. On a quarterly basis on and after January 1, 1980, there shall be levied and the department shall collect a charge of five cents per pound on each pound of uranium or thorium compound milled out of the raw ore. The total charges collected from a licensee shall not exceed one million dollars. All moneys paid to the department from these charges shall be deposited in a special security fund in the treasury of the state of Washington to be known as the "radiation perpetual maintenance fund". This security fund shall be used by the department when a licensee has ceased to operate and the site may still contain, or have associated with the site at which the licensed activity was conducted in spite of full compliance with RCW 70.121.030, radioactive material which will require further maintenance, surveillance, or other care. If, with respect to a licensee, the department determines that the estimated total of these charges will be less than or greater than that required to defray the estimated cost of administration of this responsibility, the department may prescribe such an increased or decreased charge as is considered necessary for this purpose, but in any case such charge may not exceed one million dollars. If, at termination of the license, the department determines that by the applicable standards and practices then in effect, the charges which have been collected from the licensee and earnings generated therefrom are in excess of the amount required to defray the cost of this responsibility, the department may refund the excess portion to the licensee.

Moneys in the radiation perpetual maintenance fund shall be invested by the state finance committee in the manner as other state moneys. [1979 1st ex.s. c 110 § 5.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.060 State authority to acquire property for surveillance sites. In order to provide for the proper care and surveillance of sites under RCW 70.121.050, the state may acquire by gift or transfer from any government agency, corporation, partnership, or person, all lands, buildings, and grounds necessary to fulfill the purposes of this chapter. Any such gift or transfer shall be subject to approval by the department. In exercising the authority of this section, the department shall take into consideration the status of the ownership of the land and interests therein and the ability of the licensee to transfer title and custody thereof to the state. [1979 1st ex.s. c 110 § 6.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.070 Status of acquired state property for surveillance sites. Recognizing the uncertainty of the existence of a person or corporation in perpetuity, and recognizing that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any particular agency or department thereof, all lands, buildings, and grounds acquired by the state under RCW 70.121.060 shall be owned in fee simple by the state and dedicated in perpetuity to the purposes stated in RCW 70.121.060. All radioactive material received at a site and located therein at the time of acquisition of ownership by the state shall become the property of the state. [1979 1st ex.s. c 110 § 7.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.080 Payment for transferred sites for surveillance. If a person licensed by any governmental agency other than the state or if any other governmental agency desires to transfer a site to the state for the purpose of administering or providing perpetual care, a lump sum payment shall be made to the radiation perpetual maintenance fund. The amount of the deposit shall be determined by the department taking into consideration the factors stated in RCW 70.121.050. [1979 1st ex.s. c 110 § 8.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.090 Authority for on-site inspections and monitoring. Each licensee under this chapter, as a condition of his license, shall submit to whatever reasonable on-site inspections and on-site monitoring as required in order for the department to carry out its responsibilities and duties under this chapter. Such on-site inspections and monitoring shall be conducted without the necessity of any further approval or any permit or warrant therefor. [1979 1st ex.s. c 110 § 9.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.100 Licensees' bond requirements. The secretary or the secretary's duly authorized representative shall require the posting of a bond by licensees to be used exclusively to provide funds in the event of abandonment, default, or other inability of the licensee to meet the requirements of the department. The secretary may establish bonding requirements by classes of licensees and by range of monetary amounts. In establishing these requirements, the secretary shall consider the potential for contamination, injury, cost of disposal, and reclamation of the property. [1979 1st ex.s. c 110 § 10.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.110 Acceptable bonds. A bond shall be accepted by the department if it is a bond issued by a fidelity or surety company admitted to do business in the state of Washington, a personal bond secured by such collateral as the secretary deems satisfactory, or a cash bond. [1979 1st ex.s. c 110 § 11.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.120 Forfeited bonds—Use of fund. All bonds forfeited shall be paid to the department for deposit in the radiation perpetual maintenance fund. All moneys in this fund may only be expended by the department as necessary for the protection of the public health and safety and shall not be used for normal operating expenses of the department. [1979 1st ex.s. c 110 § 12.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.130 Exemptions from bonding requirements. All state, local, or other governmental agencies, or subdivisions thereof, are exempt from the bonding requirements of this chapter. The secretary may by rule exempt classes of licensees from the bonding requirements of this chapter when the secretary finds that the exemption will not result in a significant risk to the public health and safety. [1979 1st ex.s. c 110 § 13.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.900 Construction. This chapter is cumulative and not exclusive, and no part of this chapter shall be construed to repeal any existing law specifically enacted for the protection of the public health and safety. [1979 1st ex.s. c 110 § 14.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.905 Short title. This chapter may be known as the "Mill Tailings Licensing and Perpetual Care Act of 1979". [1979 1st ex.s. c 110 § 15.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

70.121.910 Severability—1979 1st ex.s. c 110. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 1st ex.s. c 110 § 16.]

Effective date—1979 1st ex.s. c 110: See note following RCW 70.121.010.

**Chapter 70.122
NATURAL DEATH ACT**

Sections	
70.122.010	Legislative findings.
70.122.020	Definitions.
70.122.030	Directive to withhold or withdraw life-sustaining procedures.
70.122.040	Revocation of directive.
70.122.050	Liability of health personnel, facilities.
70.122.060	Procedures by physician.
70.122.070	Effects of carrying out directive—Insurance.
70.122.080	Effects of carrying out directive on cause of death.
70.122.090	Criminal conduct—Penalties.

70.122.100	Mercy killing not authorized.
70.122.900	Short title.
70.122.905	Severability—1979 c 112.

70.122.010 Legislative findings. The legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances of a terminal condition.

The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits.

The legislature further finds that, in the interest of protecting individual autonomy, such prolongation of life for persons with a terminal condition may cause loss of patient dignity, and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient.

The legislature further finds that there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use or application of life-sustaining procedures where the patient has voluntarily and in sound mind evidenced a desire that such procedures be withheld or withdrawn.

In recognition of the dignity and privacy which patients have a right to expect, the legislature hereby declares that the laws of the state of Washington shall recognize the right of an adult person to make a written directive instructing such person's physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition. [1979 c 112 § 2.]

70.122.020 Definitions. Unless the context clearly requires otherwise, the definitions contained in this section shall apply throughout this chapter.

(1) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(2) "Directive" means a written document voluntarily executed by the declarer in accordance with the requirements of RCW 70.122.030.

(3) "Health facility" means a hospital as defined in *RCW 70.38.020(7) or a nursing home as defined in *RCW 70.38.020(8).

(4) "Life-sustaining procedure" means any medical or surgical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, when applied to a qualified patient, would serve only to artificially prolong the moment of death and where, in the judgment of the attending physician, death is imminent whether or not such procedures are utilized. "Life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(5) "Physician" means a person licensed under chapters 18.71 or 18.57 RCW.

(6) "Qualified patient" means a patient diagnosed and certified in writing to be afflicted with a terminal condition by two physicians one of whom shall be the attending physician, who have personally examined the patient.

(7) "Terminal condition" means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the patient.

(8) "Adult person" means a person attaining the age of majority as defined in RCW 26.28.010 and 26.28.015. [1979 c 112 § 3.]

*Reviser's note: RCW 70.38.020 was repealed by 1979 1st ex.s. c 161 § 21.

70.122.030 Directive to withhold or withdraw life-sustaining procedures. (1) Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. The directive shall be signed by the declarer in the presence of two witnesses not related to the declarer by blood or marriage and who would not be entitled to any portion of the estate of the declarer upon declarer's decease under any will of the declarer or codicil thereto then existing or, at the time of the directive, by operation of law then existing. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarer is a patient, or any person who has a claim against any portion of the estate of the declarer upon declarer's decease at the time of the execution of the directive. The directive, or a copy thereof, shall be made part of the patient's medical records retained by the attending physician, a copy of which shall be forwarded to the health facility upon the withdrawal of life-sustaining procedures. The directive shall be essentially in the following form, but in addition may include other specific directions:

DIRECTIVE TO PHYSICIANS

Directive made this ____ day of _____ (month, year).

I _____, being of sound mind, wilfully, and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare that:

(a) If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

(b) In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences from such refusal.

(c) If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

(d) I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed _____

City, County, and State of Residence

The declarer has been personally known to me and I believe him or her to be of sound mind.

Witness _____

Witness _____

(2) Prior to effectuating a directive the diagnosis of a terminal condition by two physicians shall be verified in writing, attached to the directive, and made a permanent part of the patient's medical records. [1979 c 112 § 4.]

70.122.040 Revocation of directive. (1) A directive may be revoked at any time by the declarer, without regard to declarer's mental state or competency, by any of the following methods:

(a) By being canceled, defaced, obliterated, burned, torn, or otherwise destroyed by the declarer or by some person in declarer's presence and by declarer's direction.

(b) By a written revocation of the declarer expressing declarer's intent to revoke, signed, and dated by the declarer. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time and date when said physician received notification of the written revocation.

(c) By a verbal expression by the declarer of declarer's intent to revoke the directive. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when said physician received notification of the revocation.

(2) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual or constructive knowledge of the revocation.

(3) If the declarer becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarer's condition renders declarer able to communicate with the attending physician. [1979 c 112 § 5.]

70.122.050 Liability of health personnel, facilities. No physician or health facility which, acting in good faith in accordance with the requirements of this chapter, causes the withholding or withdrawal of life-sustaining procedures from a qualified patient, shall be subject to civil liability therefrom. No licensed health personnel, acting under the direction of a physician, who participates in good faith in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this chapter shall be subject to any civil liability. No physician, or licensed health personnel acting under the direction of a physician, who participates in good faith in the withholding or withdrawal of life-

sustaining procedures in accordance with the provisions of this chapter shall be guilty of any criminal act or of unprofessional conduct. [1979 c 112 § 6.]

70.122.060 Procedures by physician. (1) Prior to effectuating a withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to the directive, the attending physician shall make a reasonable effort to determine that the directive complies with RCW 70.122.030 and, if the patient is mentally competent, that the directive and all steps proposed by the attending physician to be undertaken are currently in accord with the desires of the qualified patient.

(2) The directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining procedures. No physician, and no licensed health personnel acting in good faith under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection. If the physician refuses to effectuate the directive, such physician shall make a good faith effort to transfer the qualified patient to another physician who will effectuate the directive of the qualified patient. [1979 c 112 § 7.]

70.122.070 Effects of carrying out directive—Insurance. (1) The withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to the patient's directive in accordance with the provisions of this chapter shall not, for any purpose, constitute a suicide.

(2) The making of a directive pursuant to RCW 70.122.030 shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(3) No physician, health facility, or other health provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan, shall require any person to execute a directive as a condition for being insured for, or receiving, health care services. [1979 c 112 § 8.]

70.122.080 Effects of carrying out directive on cause of death. The act of withholding or withdrawing life-sustaining procedures when done pursuant to a directive described in RCW 70.122.030 and which causes the death of the declarer, shall not be construed to be an intervening force or to affect the chain of proximate cause between the conduct of any person that placed the declarer in a terminal condition and the death of the declarer. [1979 c 112 § 10.]

70.122.090 Criminal conduct—Penalties. Any person who wilfully conceals, cancels, defaces, obliterates, or damages the directive of another without such

declarer's consent shall be guilty of a gross misdemeanor. Any person who falsifies or forges the directive of another, or wilfully conceals or withholds personal knowledge of a revocation as provided in RCW 70.122.040 with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarer, and thereby, because of any such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for murder in the first degree as defined in RCW 9A.32.030. [1979 c 112 § 9.]

70.122.100 Mercy killing not authorized. Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. [1979 c 112 § 11.]

70.122.900 Short title. This act shall be known and may be cited as the "Natural Death Act". [1979 c 112 § 1.]

70.122.905 Severability—1979 c 112. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. [1979 c 112 § 13.]

Chapter 70.123

SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

Sections

70.123.010	Legislative findings.
70.123.020	Definitions.
70.123.030	Departmental duties and responsibilities.
70.123.040	Minimum standards to provide basic survival needs.
70.123.050	Contracts with nonprofit organizations—Purposes.
70.123.060	Report to the legislature.
70.123.070	Duties and responsibilities of shelters.
70.123.080	Department to consult.
70.123.090	Contracts for shelter services.
70.123.100	Half of funding for shelters from local sources.
70.123.110	Aid to families in shelters.
70.123.120	Liability for withholding services.
70.123.900	Severability—1979 1st ex.s. c 245.

70.123.010 Legislative findings. The legislature finds that domestic violence is an issue of growing concern at all levels of government and that there is a present and growing need to develop innovative strategies and services which will ameliorate and reduce the trauma of domestic violence. Research findings show that domestic violence constitutes a significant percentage of homicides, aggravated assaults, and assaults and batteries in the United States. Domestic violence is a disruptive influence on personal and community life and is often interrelated with a number of other family problems and stresses. Shelters for victims of domestic violence are essential to provide protection to victims from further abuse and physical harm and to help the victim find

long-range alternative living situations, if requested. Shelters provide safety, refuge, advocacy, and helping resources to victims who may not have access to such things if they remain in abusive situations.

The legislature therefore recognizes the need for the state-wide development and expansion of shelters for victims of domestic violence. [1979 1st ex.s. c 245 § 1.]

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

(1) "Shelter" means a place of temporary refuge, offered on a twenty-four hour, seven day per week basis to victims of domestic violence and their children.

(2) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one cohabitant against another.

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

(4) "Victim" means a cohabitant who has been subjected to domestic violence.

(5) "Cohabitant" means a person who is married or who is cohabiting with a person of the opposite sex like husband and wife at the present or at sometime in the past. Any person who has one or more children in common with another person, regardless of whether they have been married or lived together at any time, shall be treated as a cohabitant. [1979 1st ex.s. c 245 § 2.]

70.123.030 Departmental duties and responsibilities. The department of social and health services, in consultation with individuals or groups having experience and knowledge of the problems of victims of domestic violence, shall:

(1) Establish minimum standards for shelters applying for grants from the department under this chapter. Classifications may be made dependent upon size, geographic location, and population needs;

(2) Receive grant applications for the development and establishment of shelters for victims of domestic violence;

(3) Distribute funds, within forty-five days after approval, to those shelters meeting departmental standards;

(4) Evaluate biennially each shelter receiving departmental funds for compliance with the established minimum standards; and

(5) Review the minimum standards each biennium to ensure applicability to community and client needs. [1979 1st ex.s. c 245 § 3.]

70.123.040 Minimum standards to provide basic survival needs. Minimum standards established by the department under RCW 70.123.030 shall ensure that shelters receiving grants under this chapter provide services meeting basic survival needs, where not provided by other means, such as, but not limited to, food, clothing, housing, safety, security, client advocacy, and counseling. These services shall be problem-oriented and designed to provide necessary assistance to the victims of domestic violence and their children. [1979 1st ex.s. c 245 § 4.]

70.123.050 Contracts with nonprofit organizations—Purposes. The department shall contract, where appropriate, with public or private nonprofit groups or organizations with experience and expertise in the field of domestic violence to:

(1) Develop and implement an educational program designed to promote public and professional awareness of the problems of domestic violence and of the availability of services for victims of domestic violence. Particular emphasis should be given to the education needs of law enforcement agencies, the legal system, the medical profession, and other relevant professions that are engaged in the prevention, identification, and treatment of domestic violence;

(2) Maintain a directory of temporary shelters and other direct service facilities for the victims of domestic violence which is current, complete, detailed, and available, as necessary, to provide useful referral services to persons seeking help on an emergency basis;

(3) Create a state-wide toll-free telephone number that would provide information and referral to victims of domestic violence;

(4) Provide opportunities to persons working in the area of domestic violence to exchange information; and

(5) Provide training opportunities for both volunteer workers and staff personnel. [1979 1st ex.s. c 245 § 5.]

70.123.060 Report to the legislature. The department shall prepare an annual report to the legislature which shall include but not be limited to:

(1) Data reflecting the geographic incidence of domestic violence in the state, indicating the number of cases officially reported as well as an assessment of the degree of unreported cases;

(2) The number of persons and relevant statistical data, where possible, of persons treated or assisted by shelters receiving state funds; and

(3) A listing of potential and feasible prevention efforts, the estimated cost of providing the prevention services, and the projected benefits of providing the services.

The department may contract, where applicable, for the information required by this section. [1979 1st ex.s. c 245 § 6.]

70.123.070 Duties and responsibilities of shelters. Shelters receiving state funds under this chapter shall:

(1) Make available shelter services to any person who is a victim of domestic violence and to that person's children;

(2) Encourage victims, with the financial means to do so, to reimburse the shelter for the services provided;

(3) Recruit, to the extent feasible, persons who are former victims of domestic violence to work as volunteers or staff personnel. An effort shall also be made to provide bilingual services;

(4) Provide prevention and treatment programs to victims of domestic violence, their children and, where possible, the abuser;

(5) Provide a day program or drop-in center to assist victims of domestic violence who have found other shelter but who have a need for support services. [1979 1st ex.s. c 245 § 7.]

70.123.080 Department to consult. The department shall consult in all phases with persons and organizations having experience and expertise in the field of domestic violence. [1979 1st ex.s. c 245 § 8.]

70.123.090 Contracts for shelter services. The department is authorized, under this chapter and the rules adopted to effectuate its purposes, to make available grants awarded on a contract basis to public or private nonprofit agencies, organizations, or individuals providing shelter services meeting minimum standards established by the department. Consideration as to need, geographic location, population ratios, and the extent of existing services shall be made in the award of grants. The department shall provide technical assistance to any nonprofit organization desiring to apply for the contracts if the organization does not possess the resources and expertise necessary to develop and transmit an application without assistance. [1979 1st ex.s. c 245 § 9.]

70.123.100 Half of funding for shelters from local sources. Fifty percent of the funding for shelters receiving grants under this chapter must be provided by one or more local, municipal, or county source, either public or private. Contributions in-kind, whether materials, commodities, transportation, office space, other types of facilities, or personal services, may be evaluated and counted as part of the required local funding.

The department shall seek, receive, and make use of any funds which may be available from federal or other sources in order to augment state funds appropriated for the purpose of this chapter, and shall make every effort to qualify for federal funding. [1979 1st ex.s. c 245 § 10.]

70.123.110 Aid to families in shelters. General assistance or aid to families with dependent children payments shall be made to otherwise eligible individuals who are residing in a secure shelter, a housing network or other shelter facility which provides shelter services to persons who are victims of domestic violence. Provisions shall be made by the department for the confidentiality of the shelter addresses where victims are residing. [1979 1st ex.s. c 245 § 11.]

70.123.120 Liability for withholding services. A shelter shall not be held liable in any civil action for denial or withdrawal of services provided pursuant to the provisions of this chapter. [1979 1st ex.s. c 245 § 12.]

70.123.900 Severability—1979 1st ex.s. c 245. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 1st ex.s. c 245 § 15.]

Chapter 70.124 ABUSE OF NURSING HOME PATIENTS

Sections

70.124.010	Legislative findings.
70.124.020	Definitions.
70.124.030	Reports of abuse or neglect.
70.124.040	Reports to department or law enforcement agency—Action required.
70.124.050	Investigations required.
70.124.060	Liability of persons making reports.
70.124.070	Failure to report is misdemeanor.
70.124.080	Department reports of abused or neglected patients.
70.124.090	Publicizing objectives.
70.124.900	Severability—1979 1st ex.s. c 228.

70.124.010 Legislative findings. (1) The Washington state legislature finds and declares that a reporting system is needed to protect nursing home patients from abuse. Instances of nonaccidental injury, neglect, death, sexual abuse, and cruelty to nursing home patients have occurred, and in the instance where a nursing home patient is deprived of his or her right to conditions of minimal health and safety, the state is justified in emergency intervention based upon verified information. Therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities.

(2) It is the intent of the legislature that: (a) As a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of the patients; and (b) such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious, or erroneous information or actions. [1979 1st ex.s. c 228 § 1.]

70.124.020 Definitions. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Court" means the superior court of the state of Washington.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatry, optometry, pharmacy, physical therapy, chiropractic, nursing, dentistry, osteopathy and surgery, or medicine and surgery. The term "practitioner" shall include a nurses aide, a nursing home administrator licensed under chapter 18.52 RCW, and a duly accredited Christian Science practitioner: *Provided, however,* That a nursing home patient who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected patient for the purposes of this chapter.

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

(5) "Nursing home" has the meaning prescribed by RCW 18.51.010.

(6) "Social worker" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of nursing home patients, or providing social services to nursing home patients, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(8) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(9) "Abuse or neglect" or "patient abuse or neglect" means the physical injury or condition, sexual abuse, or negligent treatment of a nursing home patient under circumstances which indicate that the patient's health, welfare, and safety is harmed thereby.

(10) "Negligent treatment" means an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the patient's health, welfare, and safety. [1979 1st ex.s. c 228 § 2.]

70.124.030 Reports of abuse or neglect. (1) When any practitioner, social worker, psychologist, pharmacist, employee of a nursing home, or employee of the department has reasonable cause to believe that a nursing home patient has suffered abuse or neglect, the person shall report such incident, or cause a report to be made, to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(2) Any other person who has reasonable cause to believe that a nursing home patient has suffered abuse or neglect may report such incident to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(3) The department or any law enforcement agency receiving a report of an incident of abuse or neglect involving a nursing home patient who has died or has had physical injury or injuries inflicted other than by accidental means or who has been subjected to sexual abuse shall report the incident to the proper county prosecutor for appropriate action. [1979 1st ex.s. c 228 § 3.]

70.124.040 Reports to department or law enforcement agency—Action required. (1) Where a report is deemed warranted under RCW 70.124.030, an immediate oral report shall be made by telephone or otherwise to either a law enforcement agency or to the department and, upon request, shall be followed by a report in writing. The reports shall contain the following information, if known:

(a) The name and address of the person making the report;

(b) The name and address of the nursing home patient;

(c) The name and address of the nursing home patient's relatives having responsibility for the patient;

(d) The nature and extent of the injury or injuries;

(e) The nature and extent of the neglect;

(f) The nature and extent of the sexual abuse;

(g) Any evidence of previous injuries, including their nature and extent; and

(h) Any other information which may be helpful in establishing the cause of the nursing home patient's death, injury, or injuries, and the identity of the perpetrator or perpetrators.

(2) Each law enforcement agency receiving such a report shall, in addition to taking the action required by RCW 70.124.050, immediately relay the report to the department and to other law enforcement agencies, as appropriate. For any report it receives, the department shall likewise take the required action and in addition relay the report to the appropriate law enforcement agency or agencies. The appropriate law enforcement agency or agencies shall receive immediate notification when the department, upon receipt of such report, has reasonable cause to believe that a criminal act has been committed. [1979 1st ex.s. c 228 § 4.]

70.124.050 Investigations required. Upon the receipt of a report concerning the possible occurrence of abuse or neglect, it is the duty of the law enforcement agency and the department to commence an investigation within twenty-four hours of such receipt and, where appropriate, submit a report to the appropriate prosecuting attorney. In all cases investigated by the department a report to the complainant shall be made by the department. [1979 1st ex.s. c 228 § 5.]

70.124.060 Liability of persons making reports. (1) A person participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged patient abuse or neglect in a judicial proceeding shall in so doing be immune from any liability, civil or criminal, arising out of such reporting or testifying under any law of this state or its political subdivisions, and if such person is an employee of a nursing home it shall be an unfair practice under chapter 49.60 RCW for the employer to dismiss said employee for such activity.

(2) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60-.060 (3) or (4) or 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW. [1979 1st ex.s. c 228 § 6.]

70.124.070 Failure to report is misdemeanor. A person who is required to make or to cause to be made a report pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to make such report or fails to cause such report to be made is guilty of a misdemeanor. [1979 1st ex.s. c 228 § 7.]

70.124.080 Department reports of abused or neglected patients. The department shall forward to the appropriate state licensing authority a copy of any report received pursuant to this chapter which alleges that a person who is professionally licensed by this state has abused or neglected a patient. [1979 1st ex.s. c 228 § 8.]

70.124.090 Publicizing objectives. In the adoption of rules under the authority of this chapter, the department shall provide for the publication and dissemination to nursing homes and nursing home employees and the posting where appropriate by nursing homes of informational, educational, or training materials calculated to aid and assist in achieving the objectives of this chapter. [1979 1st ex.s. c 228 § 9.]

70.124.900 Severability—1979 1st ex.s. c 228. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 1st ex.s. c 228 § 12.]

Chapter 70.125

VICTIMS OF SEXUAL ASSAULT ACT

Sections

70.125.010	Short title.
70.125.020	Legislative findings—Program objectives.
70.125.030	Definitions.
70.125.040	Coordinating office—State-wide plan.
70.125.050	State-wide program services.
70.125.060	Personal representative may accompany victim during treatment or proceedings.
70.125.070	Termination—June 30, 1985.

Victims of crimes—Compensation, assistance: Chapter 7.68 RCW.

70.125.010 Short title. This chapter may be known and cited as the Victims of Sexual Assault Act. [1979 1st ex.s. c 219 § 1.]

Severability—1979 1st ex.s. c 219: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 1st ex.s. c 219 § 22.]

70.125.020 Legislative findings—Program objectives. (1) The legislature hereby finds and declares that:

(a) Sexual assault has become one of the most rapidly increasing violent crimes over the last decade;

(b) There is a lack of essential information and data concerning sexual assault;

(c) There is a lack of adequate training for law enforcement officers concerning sexual assault, the victim, the offender, and the investigation;

(d) There is a lack of community awareness and knowledge concerning sexual assault and the physical and psychological impact upon the victim;

(e) There is a lack of public information concerning sexual assault prevention and personal self-protection;

(f) Because of the lack of information, training, and services, the victims of sexual assault are not receiving the assistance they require in dealing with the physical and psychological trauma of a sexual assault;

(g) The criminal justice system and health care system should maintain close contact and cooperation with each other and with community rape crisis centers to expedite the disposition of sexual assault cases; and

(h) Persons who are victims of sexual assault will benefit directly from increased public awareness and education, increased prosecutions, and a criminal justice system which treats them in a humane manner.

(2) Therefore, a state-wide sexual assault education, training, and consultation program should be developed. Such a state-wide program should seek to improve treatment of victims through information-gathering, education, training, community awareness programs, and by increasing the efficiency of the criminal justice and health care systems as they relate to sexual assault. Such a program should serve a consultative and facilitative function for organizations which provide services to victims and potential victims of sexual assault. [1979 1st ex.s. c 219 § 2.]

Severability—1979 1st ex.s. c 219: See note following RCW 70.125.010.

70.125.030 Definitions. As used in this chapter and unless the context indicates otherwise:

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

(2) "Law enforcement agencies" means police and sheriff's departments of this state.

(3) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a rape crisis center.

(4) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

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

(6) "Sexual assault" means one or more of the following:

(a) Rape or statutory rape;

(b) Assault with intent to commit rape;

(c) Incest or indecent liberties; or

(d) An attempt to commit any of the aforementioned offenses.

(7) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault. [1979 1st ex.s. c 219 § 3.]

Severability—1979 1st ex.s. c 219: See note following RCW 70.125.010.

70.125.040 Coordinating office—State-wide plan. The department shall establish a centralized office within the department to coordinate activities of programs relating to sexual assault and to facilitate coordination and dissemination of information to personnel in fields relating to sexual assault.

The department shall develop, with the cooperation of the criminal justice training commission, the attorney general's office, the medical profession, and existing rape crisis centers, a state-wide plan to aid organizations which provide services to victims of sexual assault. [1979 1st ex.s. c 219 § 4.]

Severability—1979 1st ex.s. c 219: See note following RCW 70.125.010.

70.125.050 State-wide program services. The state-wide program established under RCW 70.125.040 shall

include but not be limited to provision of the following services: *Provided*, That the department shall utilize existing rape crisis centers and contract, where appropriate, with these centers to provide the services identified in this section:

(1) Assistance to the criminal justice training commission in developing and offering training and education programs for criminal justice personnel on the scope and nature of the sexual assault problem;

(2) Assistance to health care personnel in training for the sensitive handling and correct legal procedures of sexual assault cases;

(3) Development of public education programs to increase public awareness concerning sexual assault in coordination with the activities of the attorney general's crime prevention efforts; and

(4) Technical assistance and advice to rape crisis centers, including the organization of existing community resources, volunteer training, identification of potential funding sources, evaluation, and education. Assistance shall be given for the development of additional programs in areas of the state where such services do not exist. [1979 1st ex.s. c 219 § 5.]

Severability—1979 1st ex.s. c 219: See note following RCW 70.125.010.

70.125.060 Personal representative may accompany victim during treatment or proceedings. If the victim of a sexual assault so desires, a personal representative of the victim's choice may accompany the victim to the hospital or other health care facility, and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings. [1979 1st ex.s. c 219 § 6.]

Severability—1979 1st ex.s. c 219: See note following RCW 70.125.010.

70.125.070 Termination—June 30, 1985. The Victims of Sexual Assault Act shall terminate on June 30, 1985, and shall be subject to all of the processes provided in RCW 43.131.010 through 43.131.110 as now existing or hereafter amended. [1979 1st ex.s. c 219 § 7.]

Severability—1979 1st ex.s. c 219: See note following RCW 70.125.010.

Title 71

MENTAL ILLNESS AND INEBRIACY

Chapters

- 71.02** Mental illness—Commitment procedure.
- 71.05** Mental illness.
- 71.06** Sexual psychopaths and psychopathic delinquents.
- 71.12** Private establishments.
- 71.20** State and local services for mentally retarded and developmentally disabled.
- 71.24** Community mental health services act.
- 71.28** Mental health and developmental disabilities services—Interstate contracts.
- 71.98** Construction.

Children's center for research and training in mental retardation: RCW 28B.20.410–28B.20.414.

County hospitals: Chapter 36.62 RCW.

Division of mental health: Chapter 72.06 RCW.

Harrison Memorial Hospital: RCW 72.29.010.

Interstate compact on mental health: Chapter 72.27 RCW.

Jurisdiction over Indians concerning mental illness: Chapter 37.12 RCW.

Narcotics addicts: Chapter 69.32 RCW.

Nonresident insane or feeble-minded persons, epileptics, sexual psychopaths, and psychopathic delinquents: Chapter 72.25 RCW.

State hospitals for mentally ill: Chapter 72.23 RCW.

Chapter 71.02

MENTAL ILLNESS—COMMITMENT PROCEDURE

(Successor Law: See Chapter 71.05 RCW)

Sections

- 71.02.310 Hospitalization charges—Continuation of responsibility, existing cases.
- 71.02.320 Hospitalization charges—Due date—Collection.
- 71.02.330 Hospitalization charges—Modification of order requiring payment.
- 71.02.340 Hospitalization charges—Modification of order to require payment by relative.
- 71.02.350 Hospitalization charges—Transportation charges—Collection.
- 71.02.360 Hospitalization charges—Collection—Statutes of limitation.
- 71.02.370 Hospitalization charges—Collection—Prosecuting attorneys to assist.
- 71.02.380 Hospitalization charges—Criminally insane—Liability.
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- 71.02.400 Hospitalization charges—Cancellation.
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- 71.02.411 Departmental assessment of charges—Responsibility for cost of hospitalization and outpatient services.
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- 71.02.413 Departmental assessment of charges—Notice of finding of responsibility—Period—Appeals—Judicial review.
- 71.02.414 Departmental assessment of charges—Judgment for accrued amounts.
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- 71.02.416 Departmental assessment of charges—Reimbursement from property subsequently acquired.
- 71.02.417 Departmental assessment of charges—Responsibility under prior laws.
- 71.02.490 Authority over patient—Federal agencies, private establishments.
- 71.02.900 Construction and purpose—1959 c 25.

Commitment to veterans administration or other federal agency: RCW 73.36.165.

Criminally insane—Procedures, rights and responsibilities: Chapter 10.77 RCW.

Guardianship of estate or person: Chapters 11.88 and 11.92 RCW.

Mental illness: Chapter 71.05 RCW.

Nonresident insane, feeble-minded, and epileptics: Chapter 72.25 RCW.

Procedure as to insane convicts: RCW 72.08.110.

State hospitals for mentally ill: Chapter 72.23 RCW.

Voluntary patients: RCW 72.23.070 through 72.23.120.

71.02.310 Hospitalization charges—Continuation of responsibility, existing cases. Patients' estates and relatives now responsible for the payment of maintenance charges upon the taking effect of this chapter shall remain so responsible hereunder. [1959 c 25 § 71.02.310. Prior: 1951 c 139 § 53.]

71.02.320 Hospitalization charges—Due date—Collection. Hospitalization charges are payable on the tenth day of each calendar month, for services rendered during the preceding month, and the department may make all necessary rules and regulations relative to the billing and collection of such charges. [1967 ex.s. c 127 § 2; 1959 c 25 § 71.02.320. Prior: 1951 c 139 § 56.]

71.02.330 Hospitalization charges—Modification of order requiring payment. The superior court may, upon petition, modify any existing order entered pursuant to *RCW 71.02.230, where it is shown that the petitioner is unable to continue payment of hospitalization charges. A hearing may be had on such petition in the nature of proceedings supplemental to execution in civil actions. Such petition must be served on the department at least ten days prior to hearings. [1959 c 25 § 71.02.330. Prior: 1951 c 139 § 58.]

*Reviser's note: RCW 71.02.230 was repealed by 1973 1st ex.s. c 142 § 66.

Proceedings supplemental to execution: Chapter 6.32 RCW.

71.02.340 Hospitalization charges—Modification of order to require payment by relative. The department may apply for modification of any existing order where it is shown that there exists some relative within the classification set forth in *RCW 71.02.230 who is able to pay hospitalization charges. Such relative must be served with notice of such petition in the same manner as summons is served in civil action. [1959 c 25 § 71.02.340. Prior: 1951 c 139 § 59.]

*Reviser's note: RCW 71.02.230 was repealed by 1973 1st ex.s. c 142 § 66.

Service of summons: RCW 4.28.080.

71.02.350 Hospitalization charges—Transportation charges—Collection. The department shall have the right to collect hospitalization and transportation charges from a patient's estate or person legally responsible for the support of a patient without the entry of any order to such effect under *RCW 71.02.230. If the person administering the patient's estate or the person responsible for the support of the patient is unable to pay such charges he shall petition the court for an order declaring such inability pursuant to RCW 71.02.330. [1959 c 25 § 71.02.350. Prior: 1951 c 139 § 60.]

*Reviser's note: RCW 71.02.230 was repealed by 1973 1st ex.s. c 142 § 66.

71.02.360 Hospitalization charges—Collection—Statutes of limitation. No statutes of limitations shall run against the state of Washington for hospitalization charges: *Provided, however,* That periods of limitations for the filing of creditors' claims against probate and guardianship estates shall apply against such claims. [1959 c 25 § 71.02.360. Prior: 1951 c 139 § 61.]

Period of limitation for claims against guardianship estate: RCW 11.92.035.

Period of limitation for claims against probate estate: RCW 11.40.010.

71.02.370 Hospitalization charges—Collection—Prosecuting attorneys to assist. The prosecuting attorneys of the various counties shall assist the department in the collection of hospitalization charges. [1959 c 25 § 71.02.370. Prior: 1951 c 139 § 64.]

71.02.380 Hospitalization charges—Criminally insane—Liability. Patients hospitalized at state hospitals as criminally insane shall be responsible for payment of hospitalization charges unless an order is obtained pursuant to RCW 71.02.330. [1959 c 25 § 71.02.380. Prior: 1951 c 139 § 62.]

Criminally insane, reimbursement for costs: RCW 10.77.250.

71.02.390 Hospitalization charges—Advance remittances. Advance remittances of hospitalization charges required under RCW 71.02.411 shall be transmitted to the state treasurer for deposit in the general fund. [1979 1st ex.s. c 67 § 5; 1959 c 25 § 71.02.390. Prior: 1951 c 139 § 57.]

Severability—1979 1st ex.s. c 67: See Note following RCW 19.28.330.

71.02.400 Hospitalization charges—Cancellation. The department shall have authority to cancel accrued hospitalization charges to the extent of one hundred dollars or less, when a patient has deceased or has been discharged. [1959 c 25 § 71.02.400. Prior: 1951 c 139 § 63.]

71.02.410 Hospitalization charges—Including charges for outpatient services, transportation costs—How computed. Charges for hospitalization of patients in state hospitals are to be based on the actual cost of operating such hospitals for the previous year, taking into consideration the overhead expense of operating the hospital and expense of maintenance and repair, including in both cases all salaries of supervision and management as well as material and equipment actually used or expended in operation as computed by the department: *Provided,* That a schedule of differing hospitalization charges may be computed, including a schedule of charges for outpatient services, considering the costs of care, treatment and maintenance in accordance with the classification of mental illness, type and intensity of treatment rendered, which may vary among and within the several state hospitals. Costs of transportation shall be computed by the department. [1967 ex.s. c 127 § 1; 1959 c 25 § 71.02.410. Prior: 1951 c 139 § 52.]

71.02.411 Departmental assessment of charges—Responsibility for cost of hospitalization and outpatient services. Any person admitted or committed to a state hospital for the mentally ill under the provisions of Title 71 RCW or RCW 72.23.070, or *chapter 10.76 RCW, and their estates and responsible relatives are liable for reimbursement to the state of the costs of hospitalization and/or outpatient services, as computed by the secretary of the department of social and health services, or his designee, in accordance with RCW 71.02.410: *Provided,* That such mentally ill person, and his or her estate, and the husband or wife of such mentally ill person and their estate shall be primarily responsible for reimbursement to the state for the costs of hospitalization and/or outpatient services; and, the parents of such mentally ill person and their estates, until such person has attained the age of eighteen years, shall be secondarily liable. [1971 ex.s. c 292 § 64; 1967 ex.s. c 127 § 4.]

*Reviser's note: Chapter 10.76 RCW was repealed by 1973 1st ex.s. c 117 § 29. Later enactment, see chapter 10.77 RCW.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

71.02.412 Departmental assessment of charges—Determination of ability to pay—Standards—Rules and regulations. The department of social and health services is authorized to investigate the financial condition of each person liable under the provisions of RCW 71.02.320 and 71.02.410 through 71.02.417, and is further authorized to make determinations of the ability of each such person to pay hospitalization charges and/or charges for outpatient services, in accordance with the provisions of RCW 71.02.320 and 71.02.410 through 71.02.417, and, for such purposes, to set a standard as a basis of judgment of ability to pay, which standard shall

be recomputed periodically to reflect changes in the costs of living, and other pertinent factors, and to make provisions for unusual and exceptional circumstances in the application of such standard.

In accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, the department shall adopt appropriate rules and regulations relating to the standards to be applied in determining ability to pay such charges, the schedule of charges pursuant to RCW 71.02.410, and such other rules and regulations as are deemed necessary to administer the provisions of RCW 71.02.320 and 71.02.410 through 71.02.417. [1979 c 141 § 126; 1967 ex.s. c 127 § 5.]

71.02.413 Departmental assessment of charges—Notice of finding of responsibility—Period—Appeals—Judicial review. In any case where determination is made that a person, or the estate of such person, is able to pay all, or any portion of the monthly charges for hospitalization, and/or charges for outpatient services, a notice of finding of responsibility shall be served on such person or persons and the legal representative of such person. The notice shall set forth the amount the department has determined that such person, or his or her estate, is able to pay per month not to exceed the monthly costs of hospitalization, and/or costs of outpatient services, as fixed in accordance with the provisions of RCW 71.02.410, or as otherwise limited by the provisions of *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417. The responsibility for the payment to the department of social and health services shall commence thirty days after service of such notice and finding of responsibility which finding of responsibility shall cover the period from the date of admission of such mentally ill person to a state hospital, and for the costs of hospitalization, and/or the costs of outpatient services, accruing thereafter. The notice and finding of responsibility shall be served upon all persons found financially responsible either personally, or, by registered or certified mail, enclosing a form for acknowledgment of service with return postage prepaid. If service is by mailing and a form of acknowledgment of service is not executed and returned to the department, then personal service must be made for the finding of responsibility to be effective. An appeal may be made to the secretary of social and health services, or his designee within thirty days from the date of posting of such notice and finding of responsibility, upon the giving of written notice of appeal to the secretary of social and health services by registered or certified mail, or by personal service. If no appeal is taken, the notice and finding of responsibility shall become final. If an appeal is taken, the execution of notice and finding of responsibility shall be stayed pending the decision of such appeal. Appeals may be heard in any county seat most convenient to the appellant. The hearing of appeal may be presided over by a hearing examiner appointed by the secretary, and the proceedings shall be recorded either manually or by a mechanical device. At the conclusion of such hearing, the hearing examiner shall make findings of fact and his conclusions and recommended determination of responsibility. Thereafter, the secretary, or his designee, may

either affirm, reject or modify the findings, conclusions and determination of responsibility made by the hearing examiner. Judicial review of the secretary's determination of responsibility in the superior court, the court of appeals, and the supreme court may be taken in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW. [1971 c 81 § 133; 1969 ex.s. c 268 § 1; 1967 ex.s. c 127 § 6.]

*Reviser's note: The references to "RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417" constitute a literal translation of the session law phrases "this 1967 amendatory act" or "this act".

"RCW 71.02.230" was repealed by section 66, chapter 142, Laws of 1973 1st ex. sess.

71.02.414 Departmental assessment of charges—Judgment for accrued amounts. Whenever any notice and finding of responsibility, or appeal therefrom, shall have become final, the superior court, wherein such person or persons reside or have property either real or personal, shall, upon application of the secretary of social and health services enter a judgment in the amount of the accrued monthly charges for the costs of hospitalization, and/or the costs of outpatient services, and such judgment shall have and be given the same effect as if entered pursuant to civil action instituted in said court. [1979 c 141 § 127; 1967 ex.s. c 127 § 7.]

71.02.415 Departmental assessment of charges—Modification or vacation of findings of responsibility. The *director, or his designee, upon application of the person responsible for payment of reimbursement to the state of the costs of hospitalization, and/or the costs of outpatient services, or the legal representative of such person, and, after investigation, or after investigation without application, the *director, or his designee, if satisfied of the financial ability or inability of such person to reimburse the state in accordance with the original finding of responsibility, may, modify or vacate such original finding of responsibility and enter a new finding of responsibility. The determination to modify or vacate findings of responsibility shall be served and be appealable in the same manner and in accordance with the same procedures for appeals of original findings of responsibility. [1967 ex.s. c 127 § 8.]

*Reviser's note: The term "director" now refers to the secretary of social and health services since the duties of the directors of the departments of health and institutions have devolved upon that officer by RCW 43.20A.120 and 43.20A.210 (1970 ex.s. c 18 §§ 10 and 20).

71.02.416 Departmental assessment of charges—Reimbursement from property subsequently acquired. The provisions of RCW 71.02.320 and 71.02.410 through 71.02.417 shall not be construed as prohibiting or preventing the department of social and health services from obtaining reimbursement from any person liable under RCW 71.02.320 and 71.02.410 through 71.02.417 for the reimbursement of the state of the full amount of the accrued charges for the costs of hospitalization, and/or the costs of outpatient services, to the extent of the liability as provided by this chapter, from any property acquired subsequent to and regardless of the initial findings of responsibility. [1979 c 141 § 128; 1967 ex.s. c 127 § 9.]

71.02.417 Departmental assessment of charges—Responsibility under prior laws. All persons admitted or committed to a state hospital under the provisions of Title 71 RCW or RCW 72.23.070, or *chapter 10.76 RCW and their responsible relatives and their estates, whose ability to pay hospitalization charges has been determined under prior laws shall not be affected by the provisions of **RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417 until a finding of responsibility shall have been made and become final in accordance with the provisions of **RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417. [1967 ex.s. c 127 § 10.]

Reviser's note: *(1) Chapter 10.76 RCW was repealed by 1973 1st ex.s. c 117 § 29. Later enactment, see chapter 10.77 RCW.

***(2) *RCW 71.02.230, 71.02.320, and 71.02.410 through 71.02.417", see note following RCW 71.02.413.

71.02.490 Authority over patient—Federal agencies, private establishments. The United States veterans' administration, or other United States government agency, or the chief officer of a private facility shall have the same powers as are conferred upon the superintendent of a state hospital with reference to retention, transfer, parole, or discharge of mentally ill persons ordered hospitalized in their facilities. [1959 c 25 § 71.02.490. Prior: 1951 c 139 § 26.]

Commitment to veterans administration or other federal agency: RCW 73.36.165.

71.02.900 Construction and purpose—1959 c 25. The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 25 § 71.02.900. Prior: 1951 c 139 § 1; 1949 c 198 § 1; Rem. Supp. 1949 § 6953-1.]

Chapter 71.05 MENTAL ILLNESS

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Rules of court: Cf. Superior Court Mental Proceedings Rules (MPR).

Commitment of mentally ill, voluntary patients—Review of condition and status: RCW 72.23.070.

Minors, commitment procedure, requirements, rights, etc.: RCW 72.23.070.

71.05.010 Legislative intent. The provisions of this chapter are intended by the legislature:

(1) To end inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;

(2) To provide prompt evaluation and short term treatment of persons with serious mental disorders;

(3) To safeguard individual rights;

(4) To provide continuity of care for persons with serious mental disorders;

(5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;

(6) To encourage, whenever appropriate, that services be provided within the community. [1973 1st ex.s. c 142 § 6.]

71.05.015 Chapter 71.05 RCW to be construed to accomplish purposes of RCW 71.05.010. It is the intent of the legislature that chapter 71.05 RCW as amended by *this 1979 act be carefully construed to accomplish the purposes stated in RCW 71.05.010 and hereby reaffirmed. [1979 1st ex.s. c 215 § 1.]

*Reviser's note: This 1979 act [1979 1st ex.s. c 215] amended the following sections of chapter 71.05 RCW: RCW 71.05.020, 71.05.050, 71.05.120, 71.05.130, 71.05.150, 71.05.180, 71.05.190, 71.05.240, 71.05.280, 71.05.320, 71.05.340, 71.05.390, and added new sections codified as RCW 71.05.015, 71.05.155 and 71.05.600. The act also consists of amendments to RCW 5.60.060, 10.77.090, 10.77.110, to the enactment of RCW 72.23.125 and to an appropriation section footnoted following RCW 71.05.600.

71.05.020 Definitions. For the purposes of this chapter:

(1) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(2) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;

(3) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self, (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior

which has caused substantial loss or damage to the property of others;

(4) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(5) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(6) "Public agency" means any evaluation and treatment facility or institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(7) "Private agency" means any person, partnership, corporation, or association not defined as a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, hospital, or sanitarium, which is conducted for, or includes a department or ward conducted for the care and treatment of persons who are mentally ill;

(8) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(9) "Department" means the department of social and health services of the state of Washington;

(10) "Secretary" means the secretary of the department of social and health services, or his designee;

(11) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules and regulations adopted by the secretary pursuant to the provisions of this chapter;

(12) "Professional person" shall mean a mental health professional, as above defined, and shall also mean a physician, registered nurse, and such others as may be defined by rules and regulations adopted by the secretary pursuant to the provisions of this chapter;

(13) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association;

(14) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(15) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree from a graduate school deemed equivalent under rules and regulations adopted by the secretary;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and short term inpatient care to persons suffering from a mental disorder, and which is certified as such by the department of social and health services: *Provided*, That a physically separate and separately operated portion of a

state hospital may be designated as an evaluation and treatment facility: *Provided further*, That a facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification: *And provided further*, That no correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter. [1979 1st ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

71.05.030 Commitment laws applicable. Persons suffering from a mental disorder may not be involuntarily committed for treatment of such disorder except pursuant to provisions of this chapter, *chapter 10.76 RCW or its successor, chapter 71.06 RCW, transfer pursuant to RCW 72.68.031 through 72.68.037, or pursuant to court ordered evaluation and treatment not to exceed ninety days pending a criminal trial or sentencing. [1974 ex.s. c 145 § 4; 1973 2nd ex.s. c 24 § 2; 1973 1st ex.s. c 142 § 8.]

*Reviser's note: Chapter 10.76 RCW was repealed by 1973 1st ex.s. c 117 § 29. Later enactment, see chapter 10.77 RCW.

71.05.040 Developmentally disabled, senile, chronic alcoholic, or drug abuse impaired persons not to be detained or judicially committed—Exceptions. Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or senile shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of serious harm to self or others: *Provided*, That a person shall not be subject to the provisions of this chapter if proceedings have been initiated under the provisions of the Washington Uniform Alcoholism and Intoxication Treatment Act, chapter 70.96A RCW. [1977 ex.s. c 80 § 41; 1975 1st ex.s. c 199 § 1; 1974 ex.s. c 145 § 5; 1973 1st ex.s. c 142 § 9.]

~~Purpose—Intent—Severability—~~1977 ex.s. c 80: See notes following RCW 4.16.190.

71.05.050 Voluntary application for mental health services—Rights—Review of condition and status—Detention—Person refusing voluntary admission, temporary detention. Nothing in this chapter shall be construed to limit the right of any person to apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder, either by direct application or by referral. Any person voluntarily admitted for inpatient treatment to any public or private agency shall be released immediately upon his request. Any person voluntarily admitted for inpatient treatment to any public or private agency shall orally be advised of the right to immediate release and further advised of such rights in writing as are secured to them pursuant to this chapter and their rights of access to attorneys, courts, and other legal redress. Their condition and status shall be reviewed at least once each one hundred eighty days for evaluation as to the need for further treatment and/or possible release, at which time they

shall again be advised of their right to release upon request: *Provided however*, That if the professional staff of any public or private agency or hospital regards a person voluntarily admitted who requests release as presenting, as a result of a mental disorder, an imminent likelihood of serious harm to himself or others, or is gravely disabled, they may detain such person for sufficient time to notify the designated county mental health professional of such person's condition to enable such mental health professional to authorize such person being further held in custody or transported to an evaluation and treatment center pursuant to the provisions of this chapter, which shall in ordinary circumstances be no later than the next judicial day: *Provided further*, That if a person is brought to the emergency room of a public or private agency or hospital for observation or treatment, said person refuses voluntary admission, and the professional staff of the public or private agency or hospital regards such person as presenting as a result of a mental disorder an imminent likelihood of serious harm to himself or others or as presenting an imminent danger because of grave disability, they may detain such person for sufficient time to notify the designated county mental health professional of such person's condition to enable such mental health professional to authorize such person being further held in custody or transported to an evaluation treatment center pursuant to the conditions in this chapter, but which time shall be no more than six hours. [1979 1st ex.s. c 215 § 6; 1975 1st ex.s. c 199 § 2; 1974 ex.s. c 145 § 6; 1973 1st ex.s. c 142 § 10.]

71.05.060 Rights of persons complained against. A person subject to confinement resulting from any petition or proceeding pursuant to the provisions of this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter. [1973 1st ex.s. c 142 § 11.]

71.05.070 Prayer treatment. The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination. [1973 1st ex.s. c 142 § 12.]

71.05.080 Effect on pending proceedings and on persons previously committed. Except as herein provided, the provisions of this chapter shall not in themselves impair any action taken in any proceeding pending under statutes in effect prior to January 1, 1974, nor shall they apply retroactively to terminate the detention of any person previously committed pursuant to statutes in effect prior to January 1, 1974. One hundred twenty days after January 1, 1974, the provisions of RCW 71.05.320(2) shall apply to all persons previously committed pursuant to chapter 71.02 RCW. [1973 1st ex.s. c 142 § 13.]

71.05.090 Choice of physicians. Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other

professional person qualified to provide such services. [1973 2nd ex.s. c 24 § 3; 1973 1st ex.s. c 142 § 14.]

71.05.100 Financial responsibility. In addition to the responsibility provided for by RCW 71.02.411, any person, or his estate, or his spouse, or the parents of a minor person who is involuntarily detained pursuant to this chapter for the purpose of treatment and evaluation outside of a facility maintained and operated by the department of social and health services shall be responsible for the cost of such care and treatment. In the event that an individual is unable to pay for such treatment or in the event payment would result in a substantial hardship upon the individual or his family, then the county of residence of such person shall be responsible for such costs. If it is not possible to determine the county of residence of the person, the cost shall be borne by the county where the person was originally detained. The department of social and health services shall, pursuant to chapter 34.04 RCW, adopt standards as to (1) inability to pay in whole or in part, (2) a definition of substantial hardship, and (3) appropriate payment schedules. Such standards shall be applicable to all county mental health administrative boards. Financial responsibility with respect to department services and facilities shall continue to be as provided in chapter 71.02 RCW. [1973 2nd ex.s. c 24 § 4; 1973 1st ex.s. c 142 § 15.]

71.05.110 Compensation of appointed counsel. Attorneys appointed for persons pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the proceeding is held, bear the costs of such legal services; (2) If such person is indigent pursuant to such standards, the costs of such services shall be borne by the county in which the proceeding is held, subject however to the responsibility for costs provided in RCW 71.05.320(2). [1973 1st ex.s. c 142 § 16.]

71.05.120 Exemptions from liability. No officer of a public or private agency, nor the superintendent, professional person in charge, his professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any county designated mental health professional shall be civilly or criminally liable for performing his duties pursuant to this chapter with regard to the decision of whether to admit, release, or detain a person for evaluation and treatment: *Provided*, That such duties were performed in good faith and without gross negligence. [1979 1st ex.s. c 215 § 7; 1974 ex.s. c 145 § 7; 1973 2nd ex.s. c 24 § 5; 1973 1st ex.s. c 142 § 17.]

71.05.130 Duties of prosecuting attorney and attorney general. In any judicial proceeding for involuntary commitment or detention, or in any proceeding challenging such commitment or detention, the prosecuting

attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention and shall defend all challenges to such commitment or detention: *Provided*, That after January 1, 1980, the attorney general shall represent and provide legal services and advice to state hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention. [1979 1st ex.s. c 215 § 8; 1973 1st ex.s. c 142 § 18.]

71.05.140 Records maintained. A record of all applications, petitions, and proceedings under this chapter shall be maintained by the county clerk in which the application, petition, or proceeding was initiated. [1973 1st ex.s. c 142 § 19.]

71.05.150 Detention of mentally disordered persons for evaluation and treatment—Procedure. (1) (a) When a mental health professional designated by the county receives information alleging that a person, as a result of a mental disorder, presents a likelihood of serious harm to others or himself, or is gravely disabled, such mental health professional, after investigation and evaluation of the specific facts alleged, and of the reliability and credibility of the person or persons, if any, providing information to initiate detention, may summon such person to appear at an evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period; the summons shall state whether the required seventy-two hour evaluation and treatment services may be delivered on an outpatient or inpatient status. The mental health professional shall also designate, at the time of the summons, from a list provided by the court, an attorney who will be appointed, if any is to be appointed, and state the name, business address, and telephone number of this attorney in the summons.

(b) The summons shall state a date and time to appear not less than twenty-four hours after the service of the summons. The summons shall state the address of the evaluation and treatment facility to which such person is to report and the business address and phone number of the mental health professional designated by the county. The summons shall state that if the person named in the summons fails to appear at the evaluation and treatment facility at or before the date and time stated in the summons, such person may be involuntarily taken into custody. Accompanying the summons to such person shall be a copy of the petition for initial detention and a notice of rights.

(c) If such mental health professional decides to summon such person for up to a seventy-two hour evaluation and treatment period, the mental health professional must file in court the summons, the petition for initial detention, and all documentary evidence. The mental health professional shall then serve or cause to be served on such person, his guardian, and conservator, if any, a copy of the summons together with a notice of rights and a petition for initial detention. After service on such person the mental health professional shall file the return of service in court and provide copies of all papers

in the court file to the evaluation and treatment facility and the designated attorney. The mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time specified on the summons if such person is not released prior to the expiration of such period.

(d) If the person summoned appears on or before the date and time specified, the evaluation and treatment facility may admit such person as required by RCW 71.05.170 or may provide treatment on an outpatient basis. If the person summoned fails to appear on or before the date and time specified, the evaluation and treatment facility shall immediately notify the mental health professional designated by the county who may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility. Should the mental health professional notify a peace officer authorizing him to take a person into custody under the provisions of this subsection, he shall file with the court a copy of such authorization and a notice of detention. At the time such person is taken into custody there shall commence to be served on such person, his guardian, and conservator, if any, a copy of the original summons together with a notice of detention, a notice of rights, and a petition for initial detention.

(2) When a mental health professional designated by the county receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm to himself or others, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(3) A peace officer may take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility pursuant to subsection (1)(d) of this section.

(4) A peace officer may, without prior notice of the proceedings provided for in subsection (1) of this section, take or cause such person to be taken into custody and immediately delivered to an evaluation and treatment facility:

(a) Only pursuant to subsections (1)(d) and (2) of this section; or

(b) When he has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm to others or himself or is in imminent danger because of being gravely disabled.

(5) Persons delivered to evaluation and treatment facilities by peace officers pursuant to subsection (4)(b) of this section may be held by the facility for a period of up to twelve hours: *Provided*, That they are examined by a mental health professional within three hours of their

arrival. Within twelve hours of their arrival, the designated county mental health professional must file a supplemental petition for detention, and commence service on the designated attorney for the detained person. [1979 1st ex.s. c 215 § 9; 1975 1st ex.s. c 199 § 3; 1974 ex.s. c 145 § 8; 1973 1st ex.s. c 142 § 20.]

71.05.155 Request to mental health professional by law enforcement agency for investigation under RCW 71.05.150—Advisory report of results. When a mental health professional is requested by a representative of a law enforcement agency, including a police officer, sheriff, a municipal attorney, or prosecuting attorney to undertake an investigation under RCW 71.05.150, as now or hereafter amended, the mental health professional shall, if requested to do so, advise said representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement representative, whichever occurs later. [1979 1st ex.s. c 215 § 10.]

71.05.160 Petition for initial detention. Any facility receiving a person pursuant to RCW 71.05.150 shall require a petition for initial detention stating the circumstances under which the person's condition was made known and stating that such officer or person has evidence, as a result of his personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm to himself or others, or that he is gravely disabled, and stating the specific facts known to him as a result of his personal observation or investigation, upon which he bases the belief that such person should be detained for the purposes and under the authority of this chapter.

If a person is involuntarily placed in an evaluation and treatment facility pursuant to RCW 71.05.150, on the next judicial day following the initial detention, the mental health professional designated by the county shall file with the court and serve the designated attorney of the detained person the petition or supplemental petition for initial detention, proof of service of notice, and a copy of a notice of emergency detention. [1974 ex.s. c 145 § 9; 1973 1st ex.s. c 142 § 21.]

71.05.170 Acceptance of petition—Notice. Whenever the designated county mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm to himself or others, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit or release such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the designated county mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-

two hours after detention. [1974 ex.s. c 145 § 10; 1973 1st ex.s. c 142 § 22.]

71.05.180 Detention period for evaluation and treatment. If the evaluation and treatment facility admits the person, it may detain him for evaluation and treatment for a period not to exceed seventy-two hours from the time of acceptance as set forth in RCW 71.05.170. The computation of such seventy-two hour period shall exclude Saturdays, Sundays and holidays. [1979 1st ex.s. c 215 § 11; 1974 ex.s. c 145 § 11; 1973 1st ex.s. c 142 § 23.]

71.05.190 Persons not admitted—Transportation—Detention of arrested person pending return to custody. If the person is not approved for admission by a facility providing seventy-two hour evaluation and treatment, and the individual has not been arrested, the facility shall furnish transportation, if not otherwise available, for the person to his place of residence or other appropriate place. If the individual has been arrested, the evaluation and treatment facility shall detain the individual for not more than eight hours at the request of the peace officer in order to enable a peace officer to return to the facility and take the individual back into custody. [1979 1st ex.s. c 215 § 12; 1974 ex.s. c 145 § 12; 1973 1st ex.s. c 142 § 24.]

71.05.200 Notice and statement of rights—Probable cause hearing. (1) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both he and, if possible, a responsible member of his immediate family, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him into custody or by personnel of the evaluation and treatment facility where he is detained that unless he is released or voluntarily admits himself for treatment within seventy-two hours of the initial detention:

(a) That a judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain him after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that he is a mentally ill person whose mental disorder presents a likelihood of serious harm to others or himself or that he is gravely disabled;

(b) That he has a right to communicate immediately with an attorney; he has a right to have an attorney appointed to represent him before and at the probable cause hearing if he is indigent; and he has the right to be told the name and address of the attorney the mental health professional has designated pursuant to this chapter;

(c) That he has the right to remain silent and that any statement he makes may be used against him;

(d) That he has the right to present evidence and to cross-examine witnesses who testify against him at the probable cause hearing; and

(e) That he has the right to refuse medication beginning twenty-four hours prior to the probable cause hearing.

(2) When proceedings are initiated under RCW 71.05.150 (2), (3), or (4)(b), no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on said designated attorney.

(3) The judicial hearing described in subsection (1) of this section is hereby authorized, and shall be held according to the provisions of subsection (1) of this section and rules promulgated by the supreme court. [1974 ex.s. c 145 § 13; 1973 1st ex.s. c 142 § 25.]

71.05.210 Evaluation—Treatment and care—Release or other disposition. Each person involuntarily admitted to an evaluation and treatment facility shall, within twenty-four hours of his admission, be examined and evaluated by a licensed physician and a mental health professional as defined in this chapter, and shall receive such treatment and care as his condition requires including treatment on an outpatient basis for the period that he is detained, except that, beginning twenty-four hours prior to a court proceeding, the individual may refuse all but emergency life-saving treatment, and the individual shall be informed at an appropriate time of his right to such refusal of treatment. Such person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his professional designee, the person presents a likelihood of serious harm to himself or others, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

An evaluation and treatment center admitting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated county mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days. [1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

71.05.220 Property of committed person. At the time a person is involuntarily admitted to an evaluation and treatment facility, the professional person in charge or his designee shall take reasonable precautions to inventory and safeguard the personal property of the person detained. A copy of the inventory, signed by the staff member making it, shall be given to the person detained

and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this section, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without the consent of the patient or order of the court. [1973 1st ex.s. c 142 § 27.]

71.05.230 Procedures for additional treatment. A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of either involuntary intensive treatment or of a less restrictive alternative to involuntary intensive treatment if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that said condition is caused by mental disorder and either results in a likelihood of serious harm to the person detained or to others, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department of social and health services; and

(4) The professional staff of the agency or facility or the mental health professional designated by the county has filed a petition for fourteen day involuntary detention or a less restrictive alternative with the court. The petition must be signed either by two physicians or by one physician and a mental health professional who have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm to others or himself, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm to others or himself, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his attorney and his guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The court has ordered a fourteen day involuntary treatment after a probable cause hearing has been held pursuant to RCW 71.05.240. [1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

71.05.240 Probable cause hearing. If a petition is filed for fourteen day involuntary treatment, the court

shall hold a probable cause hearing within seventy-two hours of the initial detention of such person as determined in RCW 71.05.180, as now or hereafter amended. If requested by the detained person or his attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may also be continued subject to the conditions set forth in RCW 71.05.210 or subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours.

At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of mental disorder, presents a likelihood of serious harm to others or himself, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department of social and health services. If the court finds that such person, as the result of a mental disorder, presents a likelihood of serious harm to others or himself, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive course of treatment for not to exceed fourteen days.

The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. [1979 1st ex.s. c 215 § 13; 1974 ex.s. c 145 § 16; 1973 1st ex.s. c 142 § 29.]

71.05.250 Probable cause hearing—Detained person's rights—Waiver of physician-patient privilege—Records as evidence. At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

(1) To present evidence on his behalf;

(2) To cross-examine witnesses who testify against him;

(3) To be proceeded against by the rules of evidence;

(4) To remain silent;

(5) To view and copy all petitions and reports in the court file.

The physician-patient privilege shall be deemed waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that it is unreasonable for the petitioner seeking fourteen-day involuntary treatment to obtain a sufficient evaluation of the detained person by a psychiatrist or psychologist or other health professional and such waiver is necessary in the opinion of the court to protect either the detained person or the public.

Whenever the physician-patient privilege is deemed waived pursuant to this section, the waiver shall be limited to the introduction of relevant and competent medical records or testimony of an evaluation or treatment facility or its staff, a facility of the department of social and health services or its staff, or a facility certified for

ninety-day treatment by the department of social and health services or its staff for the purpose of meeting evaluation requirements contained in chapter 10.77 RCW and chapter 71.12 RCW: *Provided however*, That the physician-patient privilege shall not be waived if the physician specifically identifies himself to the detained person as one who is communicating with that person for treatment only: *And provided further*, That the privilege shall not extend to incident reports involving the detained person.

The record maker shall not be required to testify in order to introduce medical records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contains opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination. [1974 ex.s. c 145 § 17; 1973 1st ex.s. c 142 § 30.]

71.05.260 Release—Exception. (1) Involuntary treatment ordered at the time of the probable cause hearing shall be for no more than fourteen days, and shall terminate sooner when, in the opinion of the professional person in charge of the facility or his professional designee, (a) the person no longer constitutes a likelihood of serious harm to himself or others, or (b) no longer is gravely disabled, or (c) is prepared to accept voluntary treatment upon referral, or (d) is to remain in the facility providing intensive treatment on a voluntary basis.

(2) A person who has been detained for fourteen days of intensive treatment shall be released at the end of the fourteen days unless one of the following applies: (a) Such person agrees to receive further treatment on a voluntary basis; or (b) such person is a patient to whom RCW 71.05.280 is applicable. [1974 ex.s. c 145 § 18; 1973 1st ex.s. c 142 § 31.]

71.05.270 Temporary release. Nothing in this chapter shall prohibit the professional person in charge of a treatment facility, or his professional designee, from permitting a person detained for intensive treatment to leave the facility for prescribed periods during the term of the person's detention, under such conditions as may be appropriate. [1973 1st ex.s. c 142 § 32.]

71.05.280 Additional confinement—Grounds—Duration. At the expiration of the fourteen day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 for an additional period, not to exceed ninety days if:

(1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself, or substantial damage upon the property of another, and (b) as a result of mental disorder presents a likelihood of serious harm to others or himself; or

(2) Such person was taken into custody as a result of conduct in which he attempted or inflicted physical

harm upon the person of another or himself, and continues to present, as a result of mental disorder, a likelihood of serious harm to others or himself; or

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.090(3), as now or hereafter amended, and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts. In any proceeding pursuant to this subsection it shall not be necessary to show intent, wilfulness, or state of mind as an element of the felony; or

(4) Such person is gravely disabled.

For the purposes of this chapter "custody" shall mean involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from a facility providing involuntary care and treatment. [1979 1st ex.s. c 215 § 14; 1974 ex.s. c 145 § 19; 1973 1st ex.s. c 142 § 33.]

71.05.290 Petition—Affidavit. (1) At any time during a person's fourteen day intensive treatment period, the professional person in charge of a treatment facility or his professional designee or the designated county mental health professional may petition the superior court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in RCW 71.05.280.

(2) The petition shall summarize the facts which support the need for further confinement and shall be supported by affidavits signed by two examining physicians, or by one examining physician and examining mental health professional. The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments which are alternatives to detention are available to such person, and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter.

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.090(3) as now existing or hereafter amended, then the professional person in charge of the treatment facility or his professional designee or the county designated mental health professional may directly file a petition for ninety day treatment under RCW 71.05.280(3). No petition for initial detention or fourteen day detention is required before such a petition may be filed. [1975 1st ex.s. c 199 § 6; 1974 ex.s. c 145 § 20; 1973 1st ex.s. c 142 § 34.]

71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of attorney, professional person. The petition for ninety day treatment shall be filed with the clerk of the superior court. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the designated county mental health professional. The designated county mental health professional shall immediately notify the person detained,

his attorney, if any, and his guardian or conservator, if any, and the prosecuting attorney, and provide a copy of the petition to such persons as soon as possible.

At the time set for appearance the detained person shall be brought before the court, unless such appearance has been waived and the court shall advise him of his right to be represented by an attorney and of his right to a jury trial. If the detained person is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent him. The court shall, if requested, appoint a reasonably available licensed physician, psychologist, or psychiatrist, designated by the detained person to examine and testify on behalf of the detained person.

The court may, if requested, also appoint a professional person as defined in RCW 71.05.020(12) to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person.

The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310. [1975 1st ex.s. c 199 § 7; 1974 ex.s. c 145 § 21; 1973 1st ex.s. c 142 § 35.]

71.05.310 Time for hearing—Due process—Jury trial—Continuation of treatment. The court shall conduct a hearing on the petition for ninety day treatment within five judicial days of the first court appearance after the probable cause hearing unless the person named in the petition requests a jury trial, in which case trial shall commence within ten judicial days of the filing of the petition for ninety day treatment. The court may continue the hearing upon the written request of the person named in the petition or his attorney, which continuance shall not exceed ten additional judicial days. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.250.

During the proceeding, the person named in the petition shall continue to be treated until released by order of the superior court. If no order has been made within thirty days after the filing of the petition, not including extensions of time requested by the detained person or his attorney, the detained person shall be released. [1975 1st ex.s. c 199 § 8; 1974 ex.s. c 145 § 22; 1973 1st ex.s. c 142 § 36.]

71.05.320 Remand for additional treatment—Duration—New petition—Grounds—Hearing. (1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department of social and health services for a further period of intensive treatment not to exceed ninety days from the date of judgment. An order for treatment less restrictive than

involuntary detention may include conditions, and if such conditions are not adhered to, the designated mental health professional may order the person apprehended under the terms and conditions of RCW 71.05.340 as now or hereafter amended.

If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department of social and health services or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment.

(2) Said person shall be released from involuntary treatment at the expiration of ninety days unless the superintendent or professional person in charge of the facility in which he is confined, or in the event of a less restrictive alternative, the designated mental health professional, files a new petition for involuntary treatment on the grounds that the committed person;

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of mental disorder presents a likelihood of serious harm to others; or

(b) Was taken into custody as a result of conduct in which he attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder a likelihood of serious harm to others; or

(c) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder presents a substantial likelihood of repeating similar acts; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in subsections (b) and (c) of this section was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to reprove that element. Such new petition for involuntary treatment shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this subsection are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided herein above. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment. No person committed as herein provided may be detained unless a valid order of commitment is in effect. No order

of commitment can exceed one hundred eighty days in length. [1979 1st ex.s. c 215 § 15; 1975 1st ex.s. c 199 § 9; 1974 ex.s. c 145 § 23; 1973 1st ex.s. c 142 § 37.]

71.05.330 Early release—Notice to court. Nothing in this chapter shall prohibit the superintendent or professional person in charge of the hospital or facility in which the person is being involuntarily treated from releasing him prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm to others.

Whenever the superintendent or professional person in charge of a hospital or facility providing involuntary treatment pursuant to this chapter releases a person prior to the expiration of ninety days, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment. [1973 1st ex.s. c 142 § 38.]

71.05.340 Outpatient treatment or care—Conditional release—Procedures for revocation. (1) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated county mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(2) The hospital or facility designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions.

(3) If the hospital or facility designated to provide outpatient care, the designated county mental health professional or the secretary determines that a conditionally released person is failing to adhere to the terms and conditions of his release, then, upon notification by the hospital or facility designated to provide outpatient care, or on his own motion, the designated county mental health professional or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near the county in which he is receiving outpatient treatment until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he had

been conditionally released. The designated county mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing. The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the designated county mental health professional or the secretary shall file his petition and order of apprehension and detention with the court and serve them upon the person detained. His attorney, if any, and his guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The issues to be determined shall be whether the conditionally released person did or did not adhere to the terms and conditions of his release; and, if he failed to adhere to such terms and conditions, whether the conditions of release should be modified or the person should be returned to the facility. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his counsel and his guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the designated county mental health professional or the secretary on the same basis set forth therein without requiring or ordering the apprehension and detention of the conditionally released person, in which case the court hearing shall take place in not less than fifteen days from the date of service of the petition upon the conditionally released person.

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided. [1979 1st ex.s. c 215 § 16; 1974 ex.s. c 145 § 24; 1973 1st ex.s. c 142 § 39.]

71.05.350 Assistance to released persons. No indigent patient shall be conditionally released or discharged from involuntary treatment without suitable clothing, and the superintendent of a state hospital shall furnish the same, together with such sum of money as he shall deem necessary for the immediate welfare of the patient. Such sum of money shall be the same as the amount required by RCW 72.02.100 to be provided to persons in need being released from correctional institutions. As funds are available, the secretary may provide payment to indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of

RCW 72.02.100 and 72.02.110, and may adopt rules and regulations to do so. [1973 1st ex.s. c 142 § 40.]

71.05.360 Rights of involuntarily detained persons.

(1) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter and shall retain all rights not denied him under this chapter.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment. [1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

71.05.370 Rights—Posting of list. Insofar as danger to the individual or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(1) To wear his own clothes and to keep and use his own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(2) To keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases;

(3) To have access to individual storage space for his private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) Not to consent to the performance of shock treatment or surgery, except emergency life-saving surgery, upon him, and not to have shock treatment or non-emergency surgery in such circumstance unless ordered by a court pursuant to a judicial hearing in which the person is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, or physician designated by such person or his counsel to testify on behalf of such person;

(8) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue;

(9) Not to have psychosurgery performed on him under any circumstances. [1974 ex.s. c 145 § 26; 1973 1st ex.s. c 142 § 42.]

71.05.380 Rights of voluntarily committed persons.

All persons voluntarily entering or remaining in any facility, institution, or hospital providing evaluation and treatment for mental disorder shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and 71.05.370. [1973 1st ex.s. c 142 § 43.]

71.05.390 Confidential information and records—Disclosure. The fact of admission and all information

and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his guardian, must be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person, not employed by the facility, who does not have the medical responsibility for the patient's care or who is not a designated county mental health professional or who is not involved in providing services under the community mental health services act, chapter 71.24 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his guardian, designates persons to whom information or records may be released, or if the person is a minor, when his parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he may be entitled.

(5) For program evaluation and/or research: *Provided*, That the secretary of social and health services adopts rules for the conduct of such evaluation and/or research. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, _____, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ _____ "

(6) To the courts as necessary to the administration of this chapter.

(7) To law enforcement officers or public health officers necessary to carry out the responsibilities of their office: *Provided*, That

(a) Only the fact and date of admission, the fact and date of discharge, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his counsel and upon

a showing of clear, cogent and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained: *Provided however*, That in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [1979 1st ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

71.05.400 Release of information to patient's next of kin, attorney, guardian, etc.—Notification of patient's death. (1) A public or private agency shall release to a patient's next of kin, attorney, guardian, or conservator, if any,

(a) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(b) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, guardian, or conservator; and such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(2) Upon the death of a patient, his next of kin, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. [1974 ex.s. c 115 § 1; 1973 2nd ex.s. c 24 § 6; 1973 1st ex.s. c 142 § 45.]

71.05.410 Notice of disappearance of patient. When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his unauthorized disappearance from the facility, and his whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives and governmental law enforcement agencies designated by the physician in charge of the patient or the professional

person in charge of the facility, or his professional designee. [1973 2nd ex.s. c 24 § 7; 1973 1st ex.s. c 142 § 46.]

71.05.420 Records of disclosure. When any disclosure of information or records is made as authorized by RCW 71.05.390 through 71.05.410, the physician in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record the date and circumstances under which said disclosure was made, the names and relationships to the patient, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed. [1973 1st ex.s. c 142 § 47.]

71.05.430 Statistical data. Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary of the department of social and health services. [1973 1st ex.s. c 142 § 48.]

71.05.440 Action for unauthorized release of confidential information—Liquidated damages—Treble damages—Injunction. Any person may bring an action against an individual who has wilfully released confidential information or records concerning him in violation of the provisions of this chapter, for the greater of the following amounts:

(1) One thousand dollars; or

(2) Three times the amount of actual damages sustained, if any. It shall not be a prerequisite to recovery under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general, damages.

Any person may bring an action to enjoin the release of confidential information or records concerning him or his ward, in violation of the provisions of this chapter, and may in the same action seek damages as provided in this section.

The court may award to the plaintiff, should he prevail in an action authorized by this section, reasonable attorney fees in addition to those otherwise provided by law. [1974 ex.s. c 145 § 28; 1973 1st ex.s. c 142 § 49.]

71.05.450 Competency—Effect—Statement of Washington law. Competency shall not be determined or withdrawn by operation of, or under the provisions of this chapter. No person shall be presumed incompetent or lose any civil rights as a consequence of receiving evaluation or treatment for mental disorder, either voluntarily or involuntarily, or certification or commitment pursuant to this chapter or any prior laws of this state dealing with mental illness. Any person who leaves a public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section. [1973 1st ex.s. c 142 § 50.]

71.05.460 Right to counsel. Every person involuntarily detained shall immediately be informed of his right

to a hearing to review the legality of his detention and of his right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him. [1973 1st ex.s. c 142 § 51.]

71.05.470 Right to examination. A person challenging his detention or his attorney, shall have the right to designate and have the court appoint a reasonably available independent physician or licensed mental health professional to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he is financially able, bear the cost of such expert information, otherwise such expert examination shall be at public expense. [1973 1st ex.s. c 142 § 52.]

71.05.480 Petitioning for release—Writ of habeas corpus. Nothing contained in this chapter shall prohibit the patient from petitioning by writ of habeas corpus for release. [1974 ex.s. c 145 § 29; 1973 1st ex.s. c 142 § 53.]

71.05.490 Present rights. Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974 from exercising a right available to him at or prior to January 1, 1974 for obtaining release from confinement. [1973 1st ex.s. c 142 § 54.]

71.05.500 Liability of applicant. Any person making or filing an application alleging that a person should be involuntarily detained, certified, committed, treated, or evaluated pursuant to this chapter shall not be rendered civilly or criminally liable where the making and filing of such application was in good faith. [1973 1st ex.s. c 142 § 55.]

71.05.510 Damages for excessive detention. Any individual who knowingly, wilfully or through gross negligence violates the provisions of this chapter by detaining a person for more than the allowable number of days shall be liable to the person detained in civil damages. It shall not be a prerequisite to an action under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general damages. [1974 ex.s. c 145 § 30; 1973 1st ex.s. c 142 § 56.]

71.05.520 Protection of rights—Staff. The department of social and health services shall have the responsibility to determine whether all rights of individuals recognized and guaranteed by the provisions of this chapter and the Constitutions of the state of Washington and the United States are in fact protected and effectively secured. To this end, the department shall assign appropriate staff who shall from time to time as may be necessary have authority to examine records, inspect facilities, attend proceedings, and do whatever is necessary to monitor, evaluate, and assure adherence to such rights. Such persons shall also recommend such additional safeguards or procedures as may be appropriate to secure individual rights set forth in this chapter and as

guaranteed by the state and federal Constitutions. [1973 1st ex.s. c 142 § 57.]

71.05.525 Transfer of person committed to juvenile correction institution to institution or facility for mentally ill juveniles. When, in the judgment of the department of social and health services, the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that such a person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of mentally ill juveniles the secretary, or his designee, is authorized to order and effect such move or transfer: *Provided, however,* That the secretary shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined in such institution or facility for the care of mentally ill juveniles, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in state juvenile correctional institutions or facilities: *Provided, further,* That the secretary shall notify the original committing court of such transfer. [1975 1st ex.s. c 199 § 12.]

71.05.530 Facilities part of comprehensive mental health program. Evaluation and treatment facilities authorized pursuant to this chapter may be part of the comprehensive community mental health services program conducted in counties pursuant to the Community Mental Health Services Act, chapter 71.24 RCW, and may receive funding pursuant to the provisions thereof. [1973 1st ex.s. c 142 § 58.]

71.05.540 Standards for public and private evaluation and treatment facilities, enforcement procedures—Penalties. (1) The department shall establish standards to be met by a public or private facility to be certified as an evaluation and treatment facility, and shall fix the fees to be paid by such facility to the department for the required inspections.

(2) The department shall periodically inspect certified evaluation and treatment facilities at reasonable times and in a reasonable manner.

(3) The department shall maintain an updated list of certified evaluation and treatment facilities.

(4) Each certified evaluation and treatment facility shall file with the department, on request, such data, statistics, schedules, and information as the department reasonably requires. A certified evaluation and treatment facility which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may be removed from the list of certified evaluation and treatment facilities and its certification revoked or suspended.

(5) The department may suspend, revoke, limit, or restrict a certification, or refuse to grant a certification for failure to conform to the law, applicable rules and regulations, or applicable standards.

(6) The superior court may restrain any evaluation and treatment facility from operating without certification or any other violation of this section. The court may also review, pursuant to procedures contained in chapter

34.04 RCW, any denial, suspension, limitation, restriction, or revocation of certification, and grant other relief required to enforce the provisions of this chapter.

(7) Upon petition by the department, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him to enter at reasonable times, and examine the records, books, and accounts of any public or private evaluation and treatment facility refusing to consent to inspection or examination by the department.

(8) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter, and shall otherwise assure the effectuation of the purposes and intent of this chapter. [1973 1st ex.s. c 142 § 59.]

71.05.550 Recognition of county financial necessities. The department of social and health services, in planning and providing funding to counties pursuant to chapter 71.24 RCW, shall recognize the financial necessities imposed upon counties by implementation of this chapter and shall consider needs, if any, for additional community mental health services and facilities and reduction in commitments to state hospitals for the mentally ill accomplished by individual counties, in planning and providing such funding. The state shall provide financial assistance to the counties to enable the counties to meet all increased costs, if any, to the counties resulting from their administration of the provisions of *this 1973 amendatory act. [1973 1st ex.s. c 142 § 60.]

***Reviser's note:** "this 1973 amendatory act" consists of this chapter, amendments to RCW 71.12.560, 71.12.570, 72.23.010, 72.23.070 and 72.23.100 by 1973 1st ex.s. c 142, and to the repeal of RCW 71.02-.010-71.02.300, 71.02.450, 71.02.650, 71.03.010-71.03.900, 71.12.580, 72.01.390, 72.01.400, 72.08.110, 72.23.140, 72.23.150, 72.23.220, 72-.23.270 and 72.25.040.

71.05.560 Adoption of rules and regulations. The department of social and health services shall adopt such rules and regulations as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality of the program and facilities operating pursuant to this chapter, evaluation of the effectiveness and cost effectiveness of such programs and facilities, and procedures and standards for certification and other action relevant to evaluation and treatment facilities. [1973 1st ex.s. c 142 § 61.]

71.05.570 Rules of court. The supreme court of the state of Washington shall adopt such rules as it shall deem necessary with respect to the court procedures and proceedings provided for by this chapter. [1973 1st ex.s. c 142 § 62.]

71.05.600 Legislative committees to be provided annual impact analysis of 1979 1st ex.s. c 215. The department shall provide annually, by August 1, to the

house standing committees on appropriations, social and health services, and institutions and the senate standing committees on ways and means and social and health services an analysis of the impact of *this 1979 act. Such analysis shall include but not be limited to: Information on the impact on the average daily population of the state mental hospitals; information on both individual and average length of stays for patients involuntarily committed; information on the grounds for commitment, recidivism, and history of treatment by the community mental health system; information on the outcomes of treatment for patients involuntarily treated either in the state hospitals or in community-based care; and, information on the status of the expenditure of funds appropriated in *this 1979 act. [1979 1st ex.s. c 215 § 19.]

***Reviser's note:** "[T]his 1979 act", see note following RCW 71.05.015.

Appropriation—Allotment reserve—1979 1st ex.s. c 215: "There is appropriated from the general fund to the department of social and health services for the 1979-81 biennium, the sum of four million five hundred twenty-three thousand dollars, of which two hundred seventy-five thousand dollars is to be from federal funds, or so much thereof as shall be necessary, to carry out the purposes of this 1979 act which include funding two hundred thirty-eight staff years: *Provided,* That these funds and staff years shall be held in allotment reserve by the office of financial management and allotted upon receipt of adequate justification for the sole purposes of meeting the requirements of this 1979 act." [1979 1st ex.s. c 215 § 20.]

71.05.900 Severability—1973 1st ex.s. c 142. If any provision of *this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 142 § 63.]

***Reviser's note:** "this 1973 amendatory act", see note following RCW 71.05.550.

71.05.910 Construction—1973 1st ex.s. c 142. Sections 6 through 63 of *this 1973 amendatory act shall constitute a new chapter in Title 71 RCW, and shall be considered the successor to those sections of chapter 71.02 RCW repealed by *this 1973 amendatory act. [1973 1st ex.s. c 142 § 64.]

***Reviser's note:** "this 1973 amendatory act", see note following RCW 71.05.550.

71.05.920 Section headings not part of the law. Section headings as used in sections 6 through 63 of *this 1973 amendatory act shall not constitute any part of law. [1973 1st ex.s. c 142 § 65.]

***Reviser's note:** "this 1973 amendatory act", see note following RCW 71.05.550.

71.05.930 Effective date—1973 1st ex.s. c 142. *This 1973 amendatory act shall take effect on January 1, 1974. [1973 1st ex.s. c 142 § 67.]

***Reviser's note:** "This 1973 amendatory act", see note following RCW 71.05.550.

Chapter 71.06

SEXUAL PSYCHOPATHS AND PSYCHOPATHIC DELINQUENTS

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Procedure as to insane convicts: RCW 72.08.110.

Telephone calls soliciting immoral acts: RCW 9.61.230–9.61.250.

71.06.010 Definitions. As used in this chapter, the following terms shall have the following meanings:

"Psychopathic personality" means the existence in any person of such hereditary, congenital or acquired condition affecting the emotional or volitional rather than the intellectual field and manifested by anomalies of such character as to render satisfactory social adjustment of such person difficult or impossible.

"Sexual psychopath" means any person who is affected in a form of psychoneurosis or in a form of psychopathic personality, which form predisposes such person to the commission of sexual offenses in a degree constituting him a menace to the health or safety of others.

"Sex offense" means one or more of the following: Abduction, incest, rape, assault with intent to commit rape, indecent assault, contributing to the delinquency of a minor involving sexual misconduct, sodomy, indecent exposure, indecent liberties with children, carnal knowledge of children, soliciting or enticing or otherwise communicating with a child for immoral purposes, vagrancy

involving immoral or sexual misconduct, or an attempt to commit any of the said offenses.

"Psychopathic delinquent" means any minor who is psychopathic, and who is a habitual delinquent, if his delinquency is such as to constitute him a menace to the health, person, or property of himself or others, and the minor is not a proper subject for commitment to a state correctional school, a penal institution, to a state school for the developmentally disabled, or to a state hospital as a mentally ill person.

"Minor" means any person under eighteen years of age.

"Department" means department of social and health services.

"Court" means the superior court of the state of Washington.

"Superintendent" means the superintendent of a state institution designated for the custody, care and treatment of sexual psychopaths or psychopathic delinquents. [1977 ex.s. c 80 § 42; 1971 ex.s. c 292 § 65; 1961 c 65 § 1; 1959 c 25 § 71.06.010. Prior: 1957 c 184 § 1; 1951 c 223 § 2; 1949 c 198 §§ 25 and 40; Rem. Supp. 1949 §§ 6953–25 and 6953–40.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

71.06.020 Sexual psychopaths—Petition. Where any person is charged in the superior court in this state with a sex offense and it appears that such person is a sexual psychopath, the prosecuting attorney may file a petition in the criminal proceeding, alleging that the defendant is a sexual psychopath and stating sufficient facts to support such allegation. Such petition must be filed and served on the defendant or his attorney at least ten days prior to hearing on the criminal charge. [1959 c 25 § 71.06.020. Prior: 1951 c 223 § 3; 1949 c 198 § 26; Rem. Supp. 1949 § 6953–26.]

71.06.030 Procedure on petition—Effect of acquittal on criminal charge. The court shall proceed to hear the criminal charge. If the defendant is convicted or has previously pleaded guilty to such charge, judgment shall be pronounced, but the execution of the sentence may be deferred or suspended, as in other criminal cases, and the court shall then proceed to hear and determine the allegation of sexual psychopathy. Acquittal on the criminal charge shall not operate to suspend the hearing on the allegation of sexual psychopathy: *Provided*, That the provisions of RCW 71.06.140 authorizing transfer of a committed sexual psychopath to a correctional institution shall not apply to the committed sexual psychopath who has been acquitted on the criminal charge. [1967 c 104 § 1; 1959 c 25 § 71.06.030. Prior: 1951 c 223 § 4.]

71.06.040 Preliminary hearing—Evidence—Detention in hospital for observation. At a preliminary hearing upon the charge of sexual psychopathy, the court may require the testimony of two duly licensed physicians who have examined the defendant. If the

court finds that there are reasonable grounds to believe the defendant is a sexual psychopath, the court shall order said defendant confined at the nearest state hospital for observation as to the existence of sexual psychopathy. Such observation shall be for a period of not to exceed ninety days. The defendant shall be detained in the county jail or other county facilities pending execution of such observation order by the department. [1959 c 25 § 71.06.040. Prior: 1951 c 223 § 5.]

71.06.050 Preliminary hearing—Report of findings. Upon completion of said observation period the superintendent of the state hospital shall return the defendant to the court, together with a written report of his findings as to whether or not the defendant is a sexual psychopath and the facts upon which his opinion is based. [1959 c 25 § 71.06.050. Prior: 1951 c 223 § 6.]

71.06.060 Preliminary hearing—Commitment, or other disposition of charge. After the superintendent's report has been filed, the court shall determine whether or not the defendant is a sexual psychopath. If said defendant is found to be a sexual psychopath, the court shall commit him to the secretary of social and health services for designation of the facility for detention, care, and treatment of the sexual psychopath. If the defendant is found not to be a sexual psychopath, the court shall order the sentence to be executed, or may discharge the defendant as the case may merit. [1979 c 141 § 129; 1967 c 104 § 2; 1959 c 25 § 71.06.060. Prior: 1951 c 223 § 7.]

71.06.070 Preliminary hearing—Jury trial. A jury may be demanded to determine the question of sexual psychopathy upon hearing after return of the superintendent's report. Such demand must be in writing and filed with the court within ten days after filing of the petition alleging the defendant to be a sexual psychopath. [1959 c 25 § 71.06.070. Prior: 1951 c 223 § 14; 1949 c 198 § 38; Rem. Supp. 1949 § 6953–38.]

71.06.080 Preliminary hearing—Construction of chapter—Trial, evidence, law relating to criminally insane. Nothing in this chapter shall be construed as to affect the procedure for the ordinary conduct of criminal trials as otherwise set up by law. Nothing in this chapter shall be construed to prevent the defendant, his attorney or the court of its own motion, from producing evidence and witnesses at the hearing on the probable existence of sexual psychopathy or at the hearing after the return of the superintendent's report. Nothing in this chapter shall be construed as affecting the laws relating to the criminally insane or the insane criminal, nor shall this chapter be construed as preventing the defendant from raising the defense of insanity as in other criminal cases. [1959 c 25 § 71.06.080. Prior: 1951 c 223 § 15.]

Criminally insane: Chapter 10.77 RCW.

71.06.091 Post commitment proceedings, releases, and further dispositions. A sexual psychopath committed

pursuant to RCW 71.06.060 shall be retained by the superintendent of the institution involved until in the superintendent's opinion he is safe to be at large, or until he has received the maximum benefit of treatment, or is not amenable to treatment, but the superintendent is unable to render an opinion that he is safe to be at large. Thereupon, the superintendent of the institution involved shall so inform whatever court committed the sexual psychopath. The court then may order such further examination and investigation of such person as seems necessary, and may at its discretion, summon such person before it for further hearing, together with any witnesses whose testimony may be pertinent, and together with any relevant documents and other evidence. On the basis of such reports, investigation, and possible hearing, the court shall determine whether the person before it shall be released unconditionally from custody as a sexual psychopath, released conditionally, returned to the custody of the institution as a sexual psychopath, or returned to the department of social and health services to serve the original sentence imposed upon him. The power of the court to grant conditional release for any such person before it shall be the same as its power to grant, amend and revoke probation as provided by chapter 9.95 RCW. When the sexual psychopath has entered upon the conditional release, the state board of prison terms and paroles shall supervise such person pursuant to the terms and conditions of the conditional release, as set by the court: *Provided*, That the superintendent of the institution involved shall never release the sexual psychopath from custody without a court release as herein set forth. [1979 c 141 § 130; 1967 c 104 § 3.]

71.06.100 Post commitment proceedings, releases, and further dispositions—Hospital record to be furnished court, board of prison terms and paroles. Where under RCW 71.06.091 the superintendent renders his opinion to the committing court, he shall provide the committing court, and, in the event of conditional release, the Washington state board of prison terms and paroles, with a copy of the hospital medical record concerning the sexual psychopath. [1967 c 104 § 4; 1959 c 25 § 71.06.100. Prior: 1951 c 223 § 10.]

71.06.120 Credit for time served in hospital. Time served by a sexual psychopath in a state hospital shall count as part of his sentence whether such sentence is pronounced before or after adjudication of his sexual psychopathy. [1959 c 25 § 71.06.120. Prior: 1951 c 223 § 13.]

71.06.130 Discharge pursuant to conditional release. Where a sexual psychopath has been conditionally released by the committing court, as provided by RCW 71.06.091 for a period of five years, the court shall review his record and when the court is satisfied that the sexual psychopath is safe to be at large, said sexual psychopath shall be discharged. [1967 c 104 § 5; 1959 c 25 § 71.06.130. Prior: 1951 c 223 § 12; 1949 c 198 § 28, part; Rem. Supp. 1949 § 6953–28, part.]

71.06.140 State hospitals for care of sexual psychopaths—Transfers to correctional institutions—Examinations, reports. The department may designate one or more state hospitals for the care and treatment of sexual psychopaths: *Provided*, That a committed sexual psychopath who has been determined by the superintendent of such mental hospital to be a custodial risk, or a hazard to other patients may be transferred by the secretary of social and health services to one of the correctional institutions within the department of social and health services which has psychiatric care facilities. A committed sexual psychopath who has been transferred to a correctional institution shall be observed and treated at the psychiatric facilities provided by the correctional institution. A complete psychiatric examination shall be given to each sexual psychopath so transferred at least twice annually. The examinations may be conducted at the correctional institution or at one of the mental hospitals. The examiners shall report in writing the results of said examinations, including recommendations as to future treatment and custody, to the superintendent of the mental hospital from which the sexual psychopath was transferred, and to the committing court, with copies of such reports and recommendations to the superintendent of the correctional institution. [1979 c 141 § 131; 1967 c 104 § 6; 1959 c 25 § 71.06.140. Prior: 1951 c 223 § 11; 1949 c 198 § 37; Rem. Supp. 1949 § 6953–37.]

71.06.150 Psychopathic delinquents—Petition—Filing. A petition alleging that a person is a psychopathic delinquent and requesting that such person be brought before the court for hearing may be filed in the superior court of the county wherein such person is found. Such petition shall be made under oath and shall state the facts upon which the allegation is based. Such petition may be filed by any of the following persons:

- (1) The parent, guardian, or other person charged with the support of the alleged psychopathic delinquent.
- (2) Any county prosecuting attorney.
- (3) Any duly appointed representative of the school district in which the alleged psychopathic delinquent resides.
- (4) Any official of a public or private welfare agency.
- (5) Any superintendent of a state institution.
- (6) Any person when so directed by the juvenile court or the criminal department of the superior court.

Where the person alleged to be a psychopathic delinquent is under the jurisdiction of the juvenile court, such petition shall be filed only under the order of such juvenile court. [1959 c 25 § 71.06.150. Prior: 1951 c 223 § 16; 1949 c 198 § 42; Rem. Supp. 1949 § 6953–42.]

Juvenile courts: Chapter 13.04 RCW.

71.06.160 Petition—Court may order filing. If a minor is brought before the juvenile court or is charged with a crime in a superior court and it appears to such court at any time prior to the execution of sentence that such minor is a psychopathic delinquent, the superior court or juvenile court may suspend proceedings, and, if a superior court, may direct the prosecuting attorney to file a petition under the provisions of this chapter, or if a

juvenile court, may direct the juvenile court probation officer to file a petition under the provisions of this chapter. If the minor is found to be a psychopathic delinquent under this chapter, the court ordering such petition to be filed shall dismiss other pending proceedings. If the minor is found not to be a psychopathic delinquent, he shall be returned to the superior court or juvenile court ordering filing of such petition for further proceedings. [1959 c 25 § 71.06.160. Prior: 1951 c 223 § 24; 1949 c 198 § 51; Rem. Supp. 1949 § 6953–51.]

71.06.170 Preliminary hearing—Time and place—Privacy. Upon filing of such petition the court shall fix a time and place for preliminary hearing, which shall give opportunity for the service of notice and the production and examination of witnesses. For the purpose of conducting hearings under this chapter, the court may be convened at any time and place within the county wherein the court resides and such hearing may be closed to the general public unless the guardian, attorney or guardian ad litem representing the alleged psychopathic delinquent demands an open hearing as in other civil actions. [1959 c 25 § 71.06.170. Prior: 1951 c 223 § 17; 1949 c 198 § 43; Rem. Supp. 1949 § 6953–43.]

71.06.180 Preliminary hearing—Detention pending preliminary hearing. The court at its discretion may issue a warrant of apprehension ordering the alleged psychopathic delinquent to be apprehended and detained pending preliminary hearing, which warrant shall be executed by the sheriff or other person designated by the court. Alleged psychopathic delinquents may be detained in county juvenile detention facilities or in the custody of some suitable person or agency at the discretion of the court. [1959 c 25 § 71.06.180. Prior: 1951 c 223 § 18; 1949 c 198 §§ 45 and 46; Rem. Supp. 1949 §§ 6953–45, 6953–46.]

71.06.190 Preliminary hearing—Scope of inquiry—Evidence. Upon preliminary hearing the court shall inquire into the mental condition, delinquency record, character, and personality of the alleged psychopathic delinquent, and for this purpose shall require the testimony of two duly licensed physicians who shall have examined the alleged psychopathic delinquent. Such physicians shall file a written report of their examination and shall testify as to whether or not the minor is a psychopathic delinquent, and the facts upon which such findings are based. The court, petitioner, or guardian, or guardian ad litem representing the alleged psychopathic delinquent may produce such witnesses as they may desire and subpoenas may issue for such purposes. [1959 c 25 § 71.06.190. Prior: 1951 c 223 § 19; 1949 c 198 § 47; Rem. Supp. 1949 § 6953–47.]

71.06.200 Observation at state hospital—Report of superintendent. If the court finds that there are reasonable grounds to believe that the minor filed against is a psychopathic delinquent, it shall order such person to be detained at the nearest state hospital for the purpose of observation and examination by the superintendent

thereof. Such observation shall be for a period not to exceed ninety days. Upon completion of such observation and examination the superintendent of such state hospital shall so notify the committing court, which shall cause the return of the alleged psychopathic delinquent and the superintendent shall file as promptly as possible his written report setting forth the facts upon which he bases his conclusion that the minor is or is not a psychopathic delinquent. [1959 c 25 § 71.06.200. Prior: 1951 c 223 § 20; 1949 c 198 § 48, part; Rem. Supp. 1949 § 6953-48, part.]

71.06.210 Hearing on petition—Evidence—Commitment. The court shall thereupon set a date for hearing on the petition, at which hearing the guardian, petitioner, attorney, or the court of its own motion, may produce additional witnesses and evidence and may require the attendance of the superintendent as a witness. Notice of such hearing shall be given pursuant to the provisions of RCW 71.06.170. If the court finds that the minor is a psychopathic delinquent, the court shall order such person committed to such institution as may be designated by the department for the custody, care and treatment of psychopathic delinquents, until released by the superintendent thereof, which order shall be executed by the sheriff or other person designated by the court. [1959 c 25 § 71.06.210. Prior: 1951 c 223 § 21; 1949 c 198 § 48, part; Rem. Supp. 1949 § 6953-48, part.]

71.06.220 Hearings are probate matters. Hearings held under the provisions of this chapter relative to psychopathic delinquents shall be handled as probate matters. [1959 c 25 § 71.06.220. Prior: 1951 c 223 § 26.]

Probate law and procedure: Title 11 RCW.

71.06.230 Jury trial. The alleged psychopathic delinquent shall have the right to trial by jury, but demand for such trial must be filed by the guardian or attorney representing the minor on or before the date of preliminary hearing. Where such demand is filed, the court shall set a date for trial and the jury shall determine the question of psychopathic delinquency but such jury trial shall be had only after return of the superintendent's report following the preliminary period of observation. If the jury finds the minor to be a psychopathic delinquent, the court shall order such minor committed as provided for in RCW 71.06.210. Such minor may be detained pending jury trial as provided for in RCW 71.06.180. [1959 c 25 § 71.06.230. Prior: 1951 c 223 § 22.]

71.06.240 Parole and discharge. Any persons committed under the provisions of this chapter may be paroled by the superintendent of the institution wherein such person is confined whenever the superintendent is of the opinion that such person has improved to an extent that he is no longer a menace to the health, lives or property of himself or others. Such opinion shall be certified to the committing court and unless within thirty days the court orders the return of such person, the superintendent may parole him upon such conditions as the superintendent may deem advisable. After five years the

superintendent shall review the record of such psychopathic delinquent, and if in his opinion such psychopathic delinquent remains safe to be at large, he shall discharge him. In addition, the superintendent may grant temporary visit paroles to psychopathic delinquents; such temporary visit paroles shall not exceed sixty days in duration, and at the expiration of such period the superintendent shall either return the psychopathic delinquent to the institution or grant a parole, as otherwise provided herein. The superintendent may grant temporary visit paroles on such conditions as he may deem advisable, but notice of such temporary visit parole shall be given to the sheriff of the county in which the psychopathic delinquent will be on temporary visit parole and the chief of police of any city or town said delinquent may be visiting. [1959 c 25 § 71.06.240. Prior: 1957 c 35 § 1; 1951 c 223 § 23; 1949 c 198 § 50; Rem. Supp. 1949 § 6953-50.]

71.06.250 State hospitals for care of psychopathic delinquents—Treatment—Laws applicable. The *director may designate any existing state institutions or portion thereof for the care and treatment of psychopathic delinquents: *Provided, however,* That such institution shall provide psychiatric care and treatment. Psychopathic delinquents committed under this chapter shall be subject to all laws pertaining to the administration of the institution in which confined. [1959 c 25 § 71.06.250. Prior: 1951 c 223 § 25; 1949 c 198 § 48, part; Rem. Supp. 1949 § 6953-48, part.]

*Reviser's note: The "director", see note following RCW 71.02.415.

71.06.260 Hospitalization costs—Sexual psychopaths, psychopathic delinquents—By whom paid. At any time any person is committed as a sexual psychopath or psychopathic delinquent the court shall, after reasonable notice of the time, place and purpose of the hearing has been given to persons subject to liability under this section, inquire into and determine the financial ability of said person, or his parents if he is a minor, or other relatives to pay the cost of care, meals and lodging during his period of hospitalization. Such cost shall be determined by the department of social and health services. Findings of fact shall be made relative to the ability to pay such cost and a judgment entered against the person or persons found to be financially responsible and directing the payment of said cost or such part thereof as the court may direct. The person committed, or his parents or relatives, may apply for modification of said judgment, or the order last entered by the court, if a proper showing of equitable grounds is made therefor. [1979 c 141 § 132; 1959 c 25 § 71.06.260. Prior: 1957 c 26 § 1; 1951 c 223 § 27.]

Chapter 71.12

PRIVATE ESTABLISHMENTS

Sections

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71.12.460
71.12.470
71.12.480

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Private and public facilities for mentally ill, commitment procedures: RCW 72.23.070.

State hospitals for mentally ill: Chapter 72.23 RCW.

71.12.455 Definitions. As used in this chapter, "establishment" and "institution" mean and include every private hospital, sanitarium, home, or other place receiving or caring for any mentally ill, or mentally incompetent person, or alcoholic. [1977 ex.s. c 80 § 43; 1959 c 25 § 71.12.455. Prior: 1949 c 198 § 53; Rem. Supp. 1949 § 6953–52a. Formerly RCW 71.12.010, part.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

71.12.460 License to be obtained—Penalty. No person, association, or corporation, shall establish or keep, for compensation or hire, an establishment as defined in this chapter without first having obtained a license therefor from the department of social and health services, and having paid the license fee provided in this chapter. Any person who carries on, conducts, or attempts to carry on or conduct an establishment as defined in this chapter without first having obtained a license from the department of social and health services, as in this chapter provided, is guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this chapter shall be liable under the provisions of this chapter in the same manner and to the same effect as a private individual violating the same. [1979 c 141 § 133; 1959 c 25 § 71.12.460. Prior: 1949 c 198 § 54; Rem. Supp. 1949 § 6953–53.]

71.12.470 License application—Fees. Every application for a license shall be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the department requires. The application shall be accompanied by the proper license fee. The amount of the license fee for each fiscal year is fixed by the following schedule:

(1) For establishments licensed to receive not more than six patients, the fee is five dollars;

(2) For establishments licensed to receive more than six but not more than twenty-five patients, the fee is twenty-five dollars;

(3) For establishments licensed to receive more than twenty-five but not more than fifty patients, the fee is fifty dollars;

(4) For establishments licensed to receive more than fifty patients, the fee is seventy-five dollars.

In the case of the issuance of a license on or after the first day of January next succeeding the beginning of the fiscal year, the license fee for the remainder of the fiscal year is one-half the sum fixed for the entire fiscal year. The department shall require a license fee in situations where licensed establishments increase their number of patients during any fiscal year, based on a pro rata charge under the schedule set forth herein. No additional fee will be required in the event of an application for transfer of a license to another person to operate the same establishment. No additional license fee shall be required for the transfer of the license issued in the name of one person to operate an establishment at a certain location where an application is received to transfer that license to the same person to operate an establishment at a different location. [1959 c 25 § 71.12.470. Prior: 1949 c 198 § 56; Rem. Supp. 1949 § 6953–55.]

71.12.480 Examination of premises before granting license. The department of social and health services shall not grant any such license until it has made an examination of the premises proposed to be licensed and is satisfied that they are substantially as described, and are otherwise fit and suitable for the purposes for which they are designed to be used, and that such license should be granted. [1979 c 141 § 134; 1959 c 25 § 71.12.480. Prior: 1949 c 198 § 57; Rem. Supp. 1949 § 6953–56.]

71.12.485 Fire protection—Duties of state fire marshal. Standards for fire protection and the enforcement thereof, with respect to all establishments to be licensed hereunder, shall be the responsibility of the state fire marshal, who shall adopt such recognized standards as may be applicable to such establishments for the protection of life against the cause and spread of fire and fire hazards. The department of social and health services, upon receipt of an application for a license, or renewal of a license, shall submit to the state fire marshal in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the state fire marshal or his deputy shall make an inspection of the establishment to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the state fire marshal, he shall promptly make a written report to the establishment and the department of social and health services as to the manner and time allowed in which the premises must qualify for a license and set forth the

conditions to be remedied with respect to fire regulations. The department of social and health services, applicant or licensee shall notify the state fire marshal upon completion of any requirements made by him, and the state fire marshal or his deputy shall make a reinspection of such premises. Whenever the establishment to be licensed meets with the approval of the state fire marshal, he shall submit to the department of social and health services a written report approving same with respect to fire protection before a full license can be issued. The state fire marshal shall make or cause to be made inspections of such establishments at least annually. The department of social and health services shall not license or continue the license of any establishment unless and until it shall be approved by the state fire marshal as herein provided.

In cities which have in force a comprehensive building code, the provisions of which are determined by the state fire marshal to be equal to the minimum standards of the state fire marshal for such establishments, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the state fire marshal or his deputy, and they shall jointly approve the premises before a full license can be issued. [1979 c 141 § 135; 1959 c 224 § 1.]

71.12.490 Expiration and renewal of license. All licenses issued under the provisions of this chapter shall expire on a date to be set by the state board of health, but no license issued pursuant to this chapter shall exceed twelve months in duration: *Provided*, That when the annual license renewal date of a previously licensed private establishment is set by the board on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. Application for renewal of the license, accompanied by the necessary fee, shall be filed with the department of social and health services annually, not less than ten days prior to its expiration and if application is not so filed, the license shall be automatically canceled. [1971 ex.s. c 247 § 4; 1959 c 25 § 71.12.490. Prior: 1949 c 198 § 59; Rem. Supp. 1949 § 6953-58.]

71.12.500 Examination of premises as to compliance with license—Revocation, suspension of license. The department of social and health services may at any time examine and ascertain how far a licensed establishment is conducted in compliance with the license therefor. If the interests of the patients of the establishment so demand, the department may, for just and reasonable cause, suspend or revoke any such license after notice and hearing. [1979 c 141 § 136; 1959 c 25 § 71.12.500. Prior: 1949 c 198 § 58; Rem. Supp. 1949 § 6953-57.]

71.12.510 Examination and visitation in general. The department may at any time cause any establishment as defined in this chapter to be visited and examined. [1959 c 25 § 71.12.510. Prior: 1949 c 198 § 60; Rem. Supp. 1949 § 6953-59.]

71.12.520 Scope of examination. Each such visit may include an inspection of every part of each establishment. The representatives of the department of social and health services may make an examination of all records, methods of administration, the general and special dietary, the stores and methods of supply, and may cause an examination and diagnosis to be made of any person confined therein. The representatives of the department may examine to determine their fitness for their duties the officers, attendants, and other employees, and may talk with any of the patients apart from the officers and attendants. [1979 c 141 § 137; 1959 c 25 § 71.12.520. Prior: 1949 c 198 § 61; Rem. Supp. 1949 § 6953-60.]

71.12.530 Conference with management—Improvement. The representatives of the department of social and health services may, from time to time, at times and places designated by the department, meet the managers or responsible authorities of such establishments in conference, and consider in detail all questions of management and improvement of the establishments, and may send to them, from time to time, written recommendations in regard thereto. [1979 c 141 § 138; 1959 c 25 § 71.12.530. Prior: 1949 c 198 § 62; Rem. Supp. 1949 § 6953-61.]

71.12.540 Recommendations to be kept on file—Records of inmates. The authorities of each establishment as defined in this chapter shall place on file in the office of the establishment the recommendations made by the department of social and health services as a result of such visits, for the purpose of consultation by such authorities, and for reference by the department representatives upon their visits. Every such establishment shall keep records of every person admitted thereto as follows and shall furnish to the department, when required, the following data: Name, age, sex, marital status, date of admission, voluntary or other commitment, name of physician, diagnosis, and date of discharge. [1979 c 141 § 139; 1959 c 25 § 71.12.540. Prior: 1949 c 198 § 63; Rem. Supp. 1949 § 6953-62.]

71.12.550 Local authorities may also prescribe standards. This chapter shall not prevent local authorities of any city, or city and county, within the reasonable exercise of the police power, from adopting rules and regulations, by ordinance or resolution, prescribing standards of sanitation, health and hygiene for establishments as defined in this chapter, which are not in conflict with the provisions of this chapter, and requiring a certificate by the local health officer, that the local health, sanitation and hygiene laws have been complied with before maintaining or conducting any such institution within such city or city and county. [1959 c 25 § 71.12.550. Prior: 1949 c 198 § 64; Rem. Supp. 1949 § 6953-63.]

71.12.560 Voluntary patients—Receipt authorized—Application—Report. The person in charge of any private institution, hospital, or sanitarium which is

conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged may receive therein as a voluntary patient any person suffering from mental illness or derangement who is a suitable person for care and treatment in the institution, hospital, or sanitarium, who voluntarily makes a written application to the person in charge for admission into the institution, hospital or sanitarium. After six months of continuous inpatient treatment as a voluntary patient in a private institution, hospital, or sanitarium, the person in charge shall forward to the office of the department of social and health services a record of the voluntary patient showing the name, residence, age, sex, place of birth, occupation, marital status, date of admission to the institution, hospital, or sanitarium, and such other information as may be required by rule of the department of social and health services. [1974 ex.s. c 145 § 1; 1973 1st ex.s. c 142 § 1; 1959 c 25 § 71.12.560. Prior: 1949 c 198 § 65; Rem. Supp. 1949 § 6953-64.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900-71.05.930.

Public and private facilities for mentally ill, commitment procedures, rights: RCW 72.23.070.

71.12.570 Communications by patients—Rights.

No person in an establishment as defined in this chapter shall be restrained from sending written communications of the fact of his detention in such establishment to a friend, relative, or other person. The physician in charge of such person and the person in charge of such establishment shall send each such communication to the person to whom it is addressed. All persons in an establishment as defined by chapter 71.12 RCW shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and 71.05.370 and to voluntarily admitted or committed persons pursuant to RCW 71.05.050 and 71.05.380. [1973 1st ex.s. c 142 § 2; 1959 c 25 § 71.12.570. Prior: 1949 c 198 § 66; Rem. Supp. 1949 § 6953-65.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900-71.05.930.

71.12.590 Revocation of license for noncompliance—Exemption as to Christian Science establishments. Failure to comply with any of the provisions of RCW 71.12.550 through *71.12.580 shall constitute grounds for revocation of license: *Provided, however,* That nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any establishment, as defined in this chapter conducted in accordance with the practice and principles of the body known as Church of Christ, Scientist. [1959 c 25 § 71.12.590. Prior: 1949 c 198 § 68; Rem. Supp. 1949 § 6953-67.]

*Reviser's note: RCW "71.12.580" was repealed by section 66, chapter 142, Laws of 1973.

71.12.640 Prosecuting attorney shall prosecute violations. The prosecuting attorney of every county shall, upon application by the department of social and health

services or its authorized representatives, institute and conduct the prosecution of any action brought for the violation within his county of any of the provisions of this chapter. [1979 c 141 § 140; 1959 c 25 § 71.12.640. Prior: 1949 c 198 § 55; Rem. Supp. 1949 § 6953-54.]

Chapter 71.20

STATE AND LOCAL SERVICES FOR MENTALLY RETARDED AND DEVELOPMENTALLY DISABLED

Sections

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71.20.010 Declaration of purpose. It is declared to be the policy of the legislature of the state of Washington to authorize the state, as part of its program to promote mental health, to develop and coordinate state services for mentally retarded persons; to encourage research and staff training for state and local personnel working with mentally retarded persons; and to cooperate with communities to encourage the establishment and development of services to the mentally retarded through locally administered and locally controlled programs. The complexities of mental retardation require the services of many state departments as well as those of the community. Services should be planned and provided as a part of a continuum. A pattern of facilities, services and eligibility should be established which is sufficiently complete to meet the needs of each retarded person regardless of age or degree of handicap, and at each state of his life's development.

It is the intention of the legislature herein that there be established a central point of referral in the community for the mentally retarded and their families and the establishment of ongoing points of contact with the mentally retarded and their families so that they may have a place of entry for services and return as the need may appear. Further, it is necessary to provide a link between the mentally retarded and sources in the community, including state departments, to the end that the mentally retarded and their families may have access to

each of the facilities best suited to them throughout the life of the retarded person. [1967 ex.s. c 110 § 1.]

71.20.015 "Developmentally disabled" defined. Persons "developmentally disabled" as used in *this amendatory act are those persons having a "developmental disability" as defined in Public Law 91-517 [42 USCA 2691(1)] as now or hereafter amended. [1974 ex.s. c 71 § 2.]

*Reviser's note: "this amendatory act" [1974 ex.s. c 71] consists of RCW 71.20.015, 71.20.075 and the amendments to RCW 71.20.040, 71.20.050, 71.20.060, 71.20.070, 71.20.090, 71.20.110, 72.33.800, 72.33.805, 72.33.810 and 72.33.815.

Severability—1974 ex.s. c 71: "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 71 § 13.] This applies to RCW 71.20.015, 71.20.075 and the amendments to RCW 71.20.040, 71.20.050, 71.20.060, 71.20.070, 71.20.090, 71.20.110, 72.33.800, 72.33.805, 72.33.810 and 72.33.815.

71.20.020 Participation in federal programs authorized—Other aid. The governor is authorized and empowered to take whatever action is necessary to enable the state to participate in the manner set forth in this chapter in any programs provided by any federal law and to designate the state agencies authorized to administer within this state the several federal acts providing federal moneys to assist in providing services and training in the state or local level for mentally retarded persons, and personnel working with such persons. Such state agencies are authorized and empowered to apply for and accept and disburse federal grants, matching funds, or other funds or gifts or donations from any source available for use by the state or by communities to provide more adequate services, training and rehabilitation of the mentally retarded. [1967 ex.s. c 110 § 2.]

71.20.030 Duties of state departments and agencies. Each state department or agency administering federal or state funds which provide services to the mentally retarded, or research or staff training in the field of mental retardation, shall consult with the mental retardation and mental health advisory council established pursuant to *RCW 71.16.020 and shall:

(1) Investigate and determine the nature and extent of services within its legal authority which are presently available to mentally retarded persons in this state;

(2) Develop and prepare any state plan or application which may be necessary to establish the eligibility of the state or any community to participate in any program established by the federal government relating to mentally retarded persons;

(3) Cooperate with other state agencies providing services to the mentally retarded to determine the availability of services and facilities within the state, and to coordinate state and local services in order to maximize services to mentally retarded persons and their families;

(4) Review and approve proposed plans required to be submitted for the expenditure of funds in community mental retardation services submitted by any community under the provisions of this chapter;

(5) Provide consultant and staff training for state and local personnel working in the field of mental retardation. [1967 ex.s. c 110 § 3.]

*Reviser's note: RCW 71.16.020 was repealed by section 386, chapter 141, Laws of 1979.

71.20.040 Community boards authorized—Composition—Expenses. The county commissioners of any county or the boards of county commissioners of more than one county by joint action, are authorized to appoint a community board to plan services for the mentally retarded and other developmentally disabled, to provide directly or indirectly a continuum of care and services to mentally retarded and other developmentally disabled persons and their families, and to coordinate all of the local mental retardation and developmental disability services within the county or counties served by such community board. Members to be appointed to the board shall include but not be limited to representatives of public, private or voluntary agencies, and local governmental units which participate in a program for mentally retarded and other developmentally disabled persons, and private citizens knowledgeable or interested in services to the mentally retarded and other developmentally disabled in the community.

The board shall consist of not less than nine nor more than fifteen members who shall be appointed by the board or boards of county commissioners for three year terms, and until their successors are appointed and qualified. The members of the community board shall not be compensated for the performance of their duties as members of the community board, but may be paid subsistence rates and mileage in the amounts prescribed by *RCW 36.17.030 as now or hereafter amended. [1974 ex.s. c 71 § 3; 1967 ex.s. 110 § 4.]

*Reviser's note: "RCW 36.17.030" was repealed by section 1, chapter 24, Laws of 1974 ex. sess.

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.050 Designation of state agency to work with county authorities—Eligibility, application, for state funds. The governor is authorized to designate a state department as the agency to work with the county commissioners and the community boards appointed by the commissioners to coordinate and provide local services for the mentally retarded and other developmentally disabled and their families. The department is authorized to promulgate rules and regulations establishing the eligibility of each community board for state funds to be used for the work of the board in coordinating and providing services to the mentally retarded and other developmentally disabled and their families. The application for state funds shall be made by the community board with the approval of the county commissioners or by the county commissioners on behalf of the community board. [1974 ex.s. c 71 § 4; 1967 ex.s. c 110 § 5.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.060 Community board services. The state agency designated by the governor pursuant to RCW 71.20.050 as now or hereafter amended may require by rule and regulation that in order to be eligible for state

funds, community boards shall provide the following indirect services to the community:

(1) Serve as an information and referral agency within the community for mentally retarded and other developmentally disabled persons and their families;

(2) Coordinate all local services for the mentally retarded and other developmentally disabled and their families to insure the maximum utilization of all services available;

(3) Make comprehensive plans for present and future development and reasonable progress toward development of comprehensive plans for the coordination of all local services to the mentally retarded and other developmentally disabled. [1974 ex.s. c 71 § 5; 1967 ex.s. c 110 § 6.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.070 Community mental retardation and other developmental disability programs—Services. Community mental retardation and other developmental disability programs which may be provided directly by community boards authorized by RCW 71.20.040 as now or hereafter amended pursuant to rules and regulations adopted by the secretary of the department of social and health services may consist of any or all of the following services:

(1) Diagnostic and evaluation services of mentally retarded and other developmentally disabled persons;

(2) Medical and dental services for those mentally retarded and other developmentally disabled individuals unable to obtain private care;

(3) Psychiatric services of those mentally retarded and other developmentally disabled unable to obtain private care in cooperation with any existing community mental health program;

(4) Group training homes providing full or part time care, support and maintenance for mentally retarded and other developmentally disabled persons: *Provided*, That nothing contained in *this amendatory act shall be construed so as to prevent or limit state funding of group training homes or group homes pursuant to chapter 72-.33 RCW, as now or hereafter amended;

(5) Facilities for vocational training and education of mentally retarded and other developmentally disabled persons;

(6) Day care centers for mentally retarded and other developmentally disabled persons;

(7) Informational service to the general public and educational services furnished by qualified personnel to schools, courts, health and welfare agencies and other appropriate public or private agencies or groups;

(8) Consultant services to public or private agencies for the promotion and coordination of services to the mentally retarded and other developmentally disabled;

(9) Family counseling services to families with mentally retarded and other developmentally disabled children;

(10) Recreation programs for mentally retarded and other developmentally disabled persons;

(11) Transportation services for the mentally retarded and other developmentally disabled persons;

(12) Legal services for the mentally retarded and other developmentally disabled persons and their families for aiding and insuring services to the mentally retarded or other developmentally disabled person unable to obtain private legal services;

(13) Home care services for the mentally retarded and other developmentally disabled persons;

(14) Any other services or facilities necessary to provide a continuum of care for the mentally retarded and other developmentally disabled persons not otherwise available. [1974 ex.s. c 71 § 6; 1967 ex.s. c 110 § 7.]

***Reviser's note:** "this amendatory act", see note following RCW 71.20.015.

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.075 Confidentiality of information. In order for the community board to coordinate and provide required services for the mentally retarded and other developmentally disabled persons pursuant to *this amendatory act, it shall be eligible to obtain such confidential information from public and/or private schools and the department of social and health services as is necessary to accomplish the purposes of *this amendatory act. Such information will be kept in accordance with state law and such rules and regulations promulgated by the secretary of the department of social and health services under chapter 34.04 RCW to permit the use of such information to coordinate and plan such services; all persons permitted access to or the use of such information must sign an oath of confidentiality, substantially as follows:

"As a condition of obtaining information from (fill in facility, agency, or person) I, -----, agree not to divulge, publish or otherwise make known to unauthorized persons or the public any information obtained in the course of using such confidential information, where release of such information may possibly make the person who received such services identifiable. I recognize that unauthorized release of confidential information may subject me to civil liability under provisions of state law." [1974 ex.s. c 71 § 1.]

***Reviser's note:** "this amendatory act", see note following RCW 71.20.015.

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.080 Consideration of applications for state aid—Rules and regulations. The state agency responsible for the administration of a state grant to a community board shall review the application from the community board or the board of county commissioners. The agency may approve such application if it meets the requirements of this chapter and the rules and regulations promulgated by the agency which establish the eligibility requirements to be met by the applicant in addition to the submission of a plan for coordination of services and for providing a continuum of such services as provided in RCW 71.20.060. The agency shall develop rules and regulations to assist in determining the amount of the grant to be made to a community board. These rules and regulations shall take into consideration the population of the area served, the need of the area,

and the ability of the community to provide funds for the continuum of care. [1967 ex.s. c 110 § 8.]

71.20.090 Community boards may receive and spend grants and donations. A community board provided for in RCW 71.20.040 as now or hereafter amended is authorized to receive and spend funds received from the state under this chapter, or any federal funds received through any state agency, or any gifts or donations received by it for the benefit of the mentally retarded or other developmentally disabled persons. [1974 ex.s. c 71 § 7; 1967 ex.s. c 110 § 9.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

71.20.100 Expenditures of county funds subject to county fiscal laws. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 110 § 10.]

71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes. In order to provide additional funds for the coordination of community mental retardation and other developmental disability services and to provide community mental retardation, other developmental disability, or mental health services, the board of county commissioners of each county in the state shall budget and levy annually a tax in a sum equal to the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property in the county to be used for such purposes: *Provided*, That all or part of the funds collected from the tax levied for the purposes of this section may be transferred to the state of Washington, department of social and health services, for the purpose of obtaining federal matching funds to provide and coordinate community mental retardation, other developmental disability, and mental health services. In the event a county elects to transfer such tax funds to the state for this purpose, the state shall grant these moneys and the additional funds received as matching funds to service-providing community agencies or community boards in the county which has made such transfer, pursuant to the plan approved by the county, as provided by chapters 71.16, 71.20, 71.24, and 71.28 RCW, all as now or hereafter amended. [1974 ex.s. c 71 § 8; 1973 1st ex.s. c 195 § 85; 1971 ex.s. c 84 § 1; 1970 ex.s. c 47 § 8; 1967 ex.s. c 110 § 16.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

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

Chapter 71.24

COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

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71.24.900	Effective date—1967 ex.s. c 111.

Comprehensive community health centers: Chapter 70.10 RCW.

71.24.010 Short title—Purpose. This chapter shall be known as the community mental health services act. It is intended to encourage and to give financial assistance to local governments in the development of community mental health programs adequate in scope and quality to their needs. [1967 ex.s. c 111 § 1.]

71.24.020 Definitions. As used in this chapter:

(1) "Secretary" shall mean the secretary of the department of social and health services or such officer of the department as he may designate to carry out in whole or in part the administration of the provisions of this chapter.

(2) "Department" shall mean the department of social and health services.

(3) "Mental health needs", "mental health programs" and "mental health services" as used in this chapter shall include but not be limited to all those items set forth in RCW 71.24.030. [1971 ex.s. c 304 § 6; 1967 ex.s. c 111 § 2.]

71.24.030 Grants to counties—Programs and services—Inservice training. The secretary is authorized, pursuant to the provisions of this chapter and the rules and regulations promulgated to effectuate its purposes, to make grants to assist counties or combinations of counties in the establishment and operation of community mental health programs to provide one or more of the following services:

- (1) Outpatient diagnostic and treatment services.
- (2) Inpatient psychiatric services.
- (3) Rehabilitation services for patients with psychiatric illnesses.
- (4) Informational services to the general public and educational services furnished by qualified mental health personnel to schools, courts, health agencies, welfare agencies, probation departments and other appropriate public or private agencies or groups.
- (5) Consultant services to public or private agencies for the promotion and coordination of services that preserve mental health and for the early recognition and management of conditions that might develop into psychiatric illnesses.
- (6) Inpatient or outpatient care, treatment or rehabilitation services of persons using controlled substances in violation of chapter 69.50 RCW.
- (7) Such services as are set forth in subsection (4) which pertain to the education and information about and prevention of problems of drug abuse.

Such inservice training as may be necessary in providing any of the foregoing services shall be proper items of expenditure in connection therewith. [1973 1st ex.s. c 155 § 5; 1972 ex.s. c 122 § 30; 1971 ex.s. c 304 § 7; 1967 ex.s. c 111 § 3.]

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

Drug and alcohol rehabilitation, education programs: Chapter 69.54 RCW.

71.24.040 Establishment of programs by county commissioners authorized—Joint county action. The board of county commissioners of any county, or the boards of county commissioners of two or more counties jointly by agreement, may by ordinance or resolution establish a community mental health program which shall be organized, operated, and financed according to the provisions of this chapter. [1967 ex.s. c 111 § 4.]

71.24.050 Methods of providing mental health services—Responsibility of supervisor or contractor. The board or boards of county commissioners, after receipt of recommendations from the community mental health program administrative board, may provide mental health services directly which shall be administered by a supervisor of community mental health services, or may contract for such services from a nonprofit corporation or corporations or secure such services through a local health department. Services obtained on contract from a nonprofit corporation or corporations or through a local health department shall be subject to the provisions of this chapter, except that those provisions requiring the appointment of a supervisor of community mental health services shall be inapplicable. Such nonprofit corporation or corporations or local health departments shall be responsible for carrying out the duties of a supervisor of mental health services as set forth in RCW 71.24.090 and as otherwise provided in this chapter, or such part or parts of that responsibility which may be deemed appropriate in accordance with the services called for in the contract. [1967 ex.s. c 111 § 5.]

71.24.060 Community mental health program administrative boards—Appointment—Term—Composition—Expenses. Every county or combination of counties desirous of establishing a community mental health program shall, before it may come within the provisions of this chapter, establish a community mental health program administrative board which shall be composed of not less than nine nor more than fifteen members. The members of such administrative board shall be appointed by the board or boards of county commissioners of the county or counties establishing the community mental health program for three year terms and until their successors are appointed and qualified. Membership of the community mental health program administrative board shall be representative of the community and shall include consumer and minority group representation. No more than four elected or appointed city or county officials may serve on such administrative board at the same time. The members of the community mental health program administrative board shall not be compensated for the performance of their duties as members of the administrative board but may be paid subsistence rates and mileage in the amounts prescribed by *RCW 36.17.030 as now or hereafter amended. [1971 ex.s. c 204 § 1; 1967 ex.s. c 111 § 6.]

*Reviser's note: RCW 36.17.030 was repealed by section 1, chapter 24, Laws of 1974 ex.s.

71.24.070 Community mental health program administrative boards—Duties. The community mental health program administrative board shall:

- (1) Review and evaluate the mental health needs, services, facilities and special problems of the area to be served by the community mental health program.

- (2) Advise the county commissioners as to a program of community mental health services, which program shall reflect the fullest feasible utilization of already existing services, and, when appropriate, advise the county commissioners concerning the appointment of a supervisor of community mental health services.

- (3) Receive and review all applications for financial support under the provisions of this chapter submitted by a nonprofit corporation, local health department, or supervisor of community mental health services and submit recommendations concerning these applications to the board or boards of county commissioners.

- (4) After adoption of a program, supervise the financial and service components of the mental health program through the supervisor of community mental health services, or through a nonprofit corporation or corporations or a local health department or any combination thereof in order to be assured that actual expenditures and programs remain consistent with the agreements contained in the application as provided.

- (5) Submit annually to the county commissioners a report of the activities of the community mental health program, including a financial accounting of expenditures.

- (6) Submit annually to the county commissioners for approval, a plan of proposed expenditures. [1967 ex.s. c 111 § 7.]

71.24.080 Supervisor of community mental health services—Appointment—Residence—Full or part time. The supervisor of community mental health services shall be appointed by the county commissioners of the county or combination of counties involved, subject to the approval of the community mental health program administrative board. Applicants for such position need not be residents of the county, city, or state, and may be employed on a full or part time basis. [1967 ex.s. c 111 § 8.]

71.24.090 Supervisor of community mental health services—Powers and duties. The supervisor of community mental health services shall have the following powers and duties:

(1) He shall serve as chief executive officer of the community mental health program.

(2) He shall exercise general supervision over mental health services furnished, operated, or supported.

(3) He shall recommend to the community mental health program administrative board the provision of services, establishment of facilities, contracts for services or facilities, and other matters necessary or desirable to accomplish the purposes of this chapter.

(4) He shall submit an annual report to the community mental health program administrative board reporting all activities of the community mental health program, including a financial accounting of expenditures and a proposed budget of anticipated expenditures for the ensuing year.

(5) He may carry on such studies as are appropriate for the discharge of his duties, including the treatment and prevention of psychiatric or emotional disorders. [1967 ex.s. c 111 § 9.]

71.24.100 Joint county agreements—Required provisions. Any agreement between the board of commissioners of two or more counties, for the establishment of a community mental health program shall provide:

(1) That each county shall bear a share of the cost of mental health services.

(2) That the treasurer of one participating county shall be the custodian of funds made available for the purposes of such mental health services, and that the treasurer may make payments from such funds upon audit by the appropriate auditing officer of the county for which he is treasurer. [1967 ex.s. c 111 § 10.]

71.24.110 Joint county agreements—Permissive provisions. Such agreement may also provide:

(1) For the joint supervision or operation of services and facilities or for the supervision or operation of services and facilities by one participating county under contract for the other participating counties.

(2) For the appointments of members of the community mental health program administrative board between or among participating counties.

(3) That for specified purposes, officers and employees of a community mental health program shall be considered to be officers and employees of one participating county only.

(4) For such other matters as are necessary or proper to effectuate the purposes of this chapter. [1967 ex.s. c 111 § 11.]

71.24.120 Contracts for services and facilities—Who may supply—Membership of supervisor in contracting organization. The board or boards of county commissioners may contract for services and facilities with any hospital, clinic, laboratory or other similar institution, or with a nonprofit corporation or corporations. Any such contract, when it has received prior approval from the director, may be entered into notwithstanding that the supervisor of community mental health services is a member of the medical or consultant staff of such hospital, clinic, laboratory, institution, or nonprofit corporation. [1967 ex.s. c 111 § 12.]

71.24.130 Proposed expenditure plan prerequisite to reimbursement by state—Review—Award. To establish eligibility for reimbursement by the department, a board or boards of county commissioners operating or administering a community mental health program shall submit annually to the director a plan for proposed expenditures. The director shall review such plan to determine compliance with the requirements established in this chapter, and, pursuant to the rules and regulations promulgated by the department, shall fix the amount subject to reimbursement. [1967 ex.s. c 111 § 13.]

71.24.140 Reimbursable expenditures. Expenditures incurred by the community mental health program for the items and services specified in RCW 71.24.030 shall, in accordance with the regulations of the director, be subject to reimbursement whether incurred by direct or joint operation of such services or whether such community mental health services are administered and operated contractually or through a local health department as provided by RCW 71.24.050. [1967 ex.s. c 111 § 14.]

71.24.150 Reimbursement by state to counties—Amount—Period. Except as hereinafter provided, there shall be paid to each county on account of expenditures made for a community mental health program subject to reimbursement by the department pursuant to the provisions of this chapter, not more than ninety percent of the amount expended for such program, exclusive of the expenditure of funds secured by a community mental health program from federal sources. Where it is determined by the secretary to be necessary for the expansion of existing mental health services or for the development of new mental health services, as described in RCW 71.24.030, and after consultation with the department of revenue regarding the extent to which local funds for the support of mental health services have been exhausted, the state share in any community mental health program may exceed ninety percent of the total expenditures: *Provided*, That the state share shall be reduced to not more than ninety percent of the total expenditures within two years from the starting date of such new services. Reimbursement shall be made on a monthly basis, upon submission to

the secretary such information as he may require: *Provided, further*, That when deemed necessary to maintain proper standards of care in the program, within rules and regulations promulgated by the secretary, the counties shall be required to provide up to fifty percent of the total expended for such program through fees, gifts, contributions, and volunteer services. [1971 ex.s. c 204 § 2; 1967 ex.s. c 111 § 15.]

71.24.160 Proof as to uses made of increases in state matching funds. The board or boards of county commissioners shall make satisfactory showing to the director that all increases in state matching funds distributed under the provisions of this chapter shall be used for expansion of existing services or for developing new services, and that such state matching funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to the effective date of this chapter. [1967 ex.s. c 111 § 16.]

71.24.165 Level of state financial support not to be less than amounts paid immediately prior to July 1, 1967. The department of social and health services in making payments of state funds in accordance with the provisions of chapter 71.24 RCW, to counties for the support of community mental health programs which were financially supported by the state prior to July 1, 1967 shall pay to the counties not less than the amounts paid by the state to such preexisting programs immediately prior to July 1, 1967: *Provided*, That in the event appropriated funds to the department of social and health services for the support of community mental health programs are insufficient to maintain community mental health programs of eligible counties at the same level prevailing during the previous biennium, then the department of social and health services shall make pro rata reductions in the payment of state funds to all counties. [1979 c 141 § 141; 1969 c 61 § 1.]

71.24.190 Department to promulgate rules—Travel expenses for attending conferences. The department shall promulgate rules and regulations to effectuate the purposes of this chapter, the form, manner and time for the submission of proposed plans for approval as submitted by the county commissioners, and the form, manner and time for the submission of claims for state reimbursement. Reimbursement may be made for travel expenses to meetings by members of the community mental health program administrative board, and for travel expenses of supervisors of community mental health services to conferences which may from time to time be called by the *director. Such travel expenses may be paid in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 165; 1967 ex.s. c 111 § 19.]

*Reviser's note: The "director", see note following RCW 71.02.415.

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

71.24.200 Expenditures of county funds subject to county fiscal laws. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 111 § 20.]

71.24.210 Payment by patients for services—Exemptions. Community mental health programs shall require that patients make payment for community mental health services in accordance with their ability to pay, rendered pursuant to a plan submitted to the secretary, but not in excess of actual cost: *Provided*, That the secretary may exempt from the fee payment requirement services rendered to children with behavioral or emotional disabilities when these services are provided as part of a cooperative program with a public school district in accordance with chapter 28A.13 RCW. [1979 1st ex.s. c 145 § 1; 1967 ex.s. c 111 § 21.]

71.24.220 Reimbursement may be withheld for non-compliance with chapter or regulations. The *director may withhold state reimbursement in whole or in part for any community mental health program in the event of a failure to comply with the provisions of this chapter or regulations made by the department pursuant thereto relating to the community mental health program or the administration thereof. [1967 ex.s. c 111 § 22.]

*Reviser's note: The "director", see note following RCW 71.02.415.

71.24.230 Department designated "state mental health authority"—Agreements with federal agencies. The department is designated as the "state mental health authority" and shall be authorized to enter into agreements with any agency of the United States government concerning the mental health program of the state. [1967 ex.s. c 111 § 23.]

71.24.240 County program plans to be approved by director prior to submittal to federal agency. In order to establish eligibility for funding under this chapter, any county or counties seeking to obtain federal funds for the support of any aspect of a community mental health program as defined in this chapter shall submit program plans to the *director for prior review and approval before such plans are submitted to any federal agency. [1967 ex.s. c 111 § 24.]

*Reviser's note: The "director", see note following RCW 71.02.415.

71.24.250 County commissioners may accept and expend gifts and grants. The board or boards of county commissioners are authorized to accept and expend gifts and grants received from private, county, state, and federal sources. [1967 ex.s. c 111 § 25.]

71.24.900 Effective date—1967 ex.s. c 111. This act shall take effect on July 1, 1967. [1967 ex.s. c 111 § 26.]

Chapter 71.28**MENTAL HEALTH AND DEVELOPMENTAL
DISABILITIES SERVICES—INTERSTATE
CONTRACTS**

Sections

71.28.010 Contracts by boundary counties or cities therein.

71.28.010 Contracts by boundary counties or cities therein. Any county, or city within a county which is situated on the state boundaries is authorized to contract for mental health and/or developmental disabilities services with a county situated in either the states of Oregon or Idaho, located on the boundaries of such states with the state of Washington. [1977 ex.s. c 80 § 44; 1967 c 84 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Chapter 71.98**CONSTRUCTION**

Sections

71.98.010 Continuation of existing law.
71.98.020 Title, chapter, section headings not part of law.
71.98.030 Invalidity of part of title not to affect remainder.
71.98.040 Repeals and saving.
71.98.050 Emergency—1959 c 25.

71.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 25 § 71.98.010.]

71.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 25 § 71.98.020.]

71.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1959 c 25 § 71.98.030.]

71.98.040 Repeals and saving. The following acts or parts of acts are repealed:

- (1) Sections 1 through 7, pages 113 and 114, Laws of 1879;
- (2) Sections 1 through 4, pages 13 and 14, Laws of 1881;
- (3) Sections 1671 through 1677, chapter 113, Code of 1881;
- (4) Sections 1, 6 and 7, pages 32 and 33, Laws of 1883;
- (5) Sections 416 and 417, chapter 249, Laws of 1909;
- (6) Chapter 105, Laws of 1915;
- (7) Chapter 109, Laws of 1915;
- (8) Chapter 145, Laws of 1923;

- (9) Chapter 42, Laws of 1939;
- (10) Chapter 179, Laws of 1947;
- (11) Sections 1 through 19, 21 through 51 and 53 through 69, chapter 198, Laws of 1949;
- (12) Sections 1 through 5, 17 through 39, and 51 through 64, chapter 139, Laws of 1951;
- (13) Chapter 223, Laws of 1951;
- (14) Chapter 24, Laws of 1957;
- (15) Chapter 26, Laws of 1957;
- (16) Chapter 28, Laws of 1957;
- (17) Chapter 35, Laws of 1957;
- (18) Chapter 49, Laws of 1957;
- (19) Chapter 184, Laws of 1957.

Such repeals shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder, nor the term of office or appointment or employment of any person appointed or employed thereunder. [1959 c 25 § 71.98.040.]

71.98.050 Emergency—1959 c 25. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 25 § 71.98.050.]



Title 72

STATE INSTITUTIONS

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Social security benefits, payment to survivors or department of social and health services: RCW 11.66.010.

State administrative departments and agencies: Chapter 43.17 RCW.

Washington commodities to be used: Chapter 39.24 RCW.

72.01.010 Definitions. As used in this title:

"Department" means the department of social and health services; and

"Secretary" means the secretary of social and health services. [1979 c 141 § 142; 1970 ex.s. c 18 § 56; 1959 c 28 § 72.01.010. Prior: 1907 c 166 § 10; RRS § 10919. Formerly RCW 72.04.010.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.01.042 Hours of labor for full time employees—Compensatory time—Premium pay. The hours of labor for each full time employee shall be a maximum of eight hours in any work day and forty hours in any work week.

Employees required to work in excess of the eight-hour maximum per day or the forty-hour maximum per week shall be compensated by not less than equal hours of compensatory time off or, in lieu thereof, a premium rate of pay per hour equal to not less than one-hundred and seventy-sixth of the employee's gross monthly salary: *Provided*, That in the event that an employee is granted compensatory time off, such time off should be given within the calendar year and in the event that such an arrangement is not possible the employee shall be given a premium rate of pay: *Provided further*, That compensatory time and/or payment thereof shall be allowed only for overtime as is duly authorized and accounted for under rules and regulations established by the secretary of social and health services. [1979 c 141 § 143; 1970 ex.s. c 18 § 60; 1953 c 169 § 1. Formerly RCW 43.19.255. Redesignated as RCW 72.01.042 and added to chapter 28, Laws of 1959 and Title 72 RCW by 1965 c 8 § 43.19.255.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.01.043 Hours of labor for full time employees—Certain personnel excepted. RCW 72.01.042 shall not be applicable to the following designated personnel: Administrative officers of the department; institutional superintendents, medical staff other than nurses, and business managers; and such professional, administrative and supervisory personnel as designated prior to July 1, 1970 by the department of social and health services with the concurrence of the merit system board having jurisdiction. [1979 c 141 § 144; 1970 ex.s. c 18 § 61; 1953 c 169 § 2. Formerly RCW 43.19.256. Redesignated as RCW 72.01.043 and added to chapter 28, Laws of 1959 and Title 72 RCW by 1965 c 8 § 43.19.256.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.01.050 Secretary's powers and duties—Management of public institutions. The secretary shall have full power to manage and govern the following public institutions.

The western state hospital, the eastern state hospital, the northern state hospital, the state penitentiary, the state reformatory, the state training school, the state school for girls, Lakeland Village, the Rainier school, the state school for the deaf, the state school for the blind, and such other institutions as authorized by law, subject only to the limitations contained in laws relating to the management of such institutions. [1979 c 141 § 145; 1977 c 31 § 1; 1959 c 28 § 72.01.050. Prior: 1955 c 195 § 4(1); 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.020, part.]

Correctional institution for juveniles: Chapter 72.18 RCW.

Correctional institution for male felons—Reception and classification center: Chapter 72.13 RCW.

Fircrest school, Yakima Valley school, Rainier school, Lakeland Village, established: RCW 72.33.030.

72.01.060 Superintendents—Appointment—Terms—Salaries—Assistants. It shall be the duty of the secretary to appoint a chief executive officer for each public institution under his control, who shall devote his entire time to the duties of his office and whose title shall be "superintendent". Said appointment shall be for a term of four years, but the appointee may be removed by the secretary in his discretion.

No person shall be eligible for appointment as superintendent of a hospital for the mentally ill unless he has had three or more years experience as a practicing physician after receiving his diploma or license.

Except as otherwise provided in this title, the superintendent of each institution may appoint all assistants and employees required for the management of the institution placed in his charge, the number of such assistants and employees to be determined and fixed by the secretary. The superintendent of any institution may, at his pleasure, discharge any person therein employed. The secretary shall investigate all complaints made against the superintendent of any institution and also any complaint against any other officer or employee thereof, if it has not been investigated and reported upon by the superintendent.

The secretary may, after investigation, for good and sufficient reasons, order the discharge of any subordinate officer or employee of an institution.

Each superintendent shall receive such salary as is fixed by the secretary, who shall also fix the compensation of other officers and the employees of each institution. Such latter compensation shall be fixed on or before the first day of April of each year and no change shall be made in the compensation, so fixed, during the twelve months period commencing April 1st. [1979 c 141 § 146; 1959 c 28 § 72.01.060. Prior: 1907 c 166 § 5; 1901 c 119 § 6; RRS § 10902. Formerly RCW 72.04.020.]

Correctional institution for juveniles, superintendent: RCW 72.18.040.

Correctional institution for male felons—Reception and classification center, superintendent: RCW 72.13.040.

Maple Lane School, appointment of superintendent and subordinate officers and employees: RCW 72.20.020.

State hospitals for mentally ill, superintendents: RCW 72.23.030.

State penitentiary, duties of superintendent: RCW 72.08.040.

State reformatory, appointment of physicians, subordinate officers, guards and employees: RCW 72.12.040.

State residential schools, superintendents' powers and duties: RCW 72.33.040.

State schools for blind and deaf, appointment of superintendent, discharge of employees: RCW 72.40.020.

Washington veterans' home, superintendent: RCW 72.36.020.

72.01.090 Rules and regulations. The department is authorized to make its own rules for the proper execution of its powers. It shall also have the power to adopt rules and regulations for the government of the public institutions placed under its control, and shall therein prescribe, in a manner consistent with the provisions of this title, the duties of the persons connected with the management of such public institutions. [1959 c 28 § 72.01.090. Prior: 1907 c 166 § 7; 1901 c 119 § 9; RRS § 10905. Formerly RCW 72.04.060.]

72.01.110 Construction or repair of buildings. The department may employ the services of competent architects for the preparation of plans and specifications for new buildings, or for repairs, changes, or additions to buildings already constructed, employ competent persons to superintend the construction of new buildings or repairs, changes, or additions to buildings already constructed and call for bids and award contracts for the erection of new buildings, or for repairs, changes, or additions to buildings already constructed: *Provided*, That the department may proceed with the erecting of any new building, or repairs, changes, or additions to any buildings already constructed, employing thereon the labor of the inmates of the institution, when in its judgment the improvements can be made in as satisfactory a manner and at a less cost to the state by so doing. [1959 c 28 § 72.01.110. Prior: 1901 c 119 § 12; RRS § 10909. Formerly RCW 72.04.100.]

Public works: Chapter 39.04 RCW.

72.01.120 Construction or repair of buildings—Award of contracts. When improvements are to be made under contract, notice of the call for the same shall be

published in at least two newspapers of general circulation in the state for two weeks prior to the award being made. The contract shall be awarded to the lowest responsible bidder. The secretary is authorized to require such security as he may deem proper to accompany the bids submitted, and shall also fix the amount of the bond or other security that shall be furnished by the person or firm to whom the contract is awarded. The secretary shall have the power to reject any or all bids submitted, if for any reason it is deemed for the best interest of the state to do so, and to readvertise in accordance with the provisions hereof. The secretary shall also have the power to reject the bid of any person or firm who has had a prior contract, and who did not, in the opinion of the secretary, faithfully comply with the same. [1979 c 141 § 148; 1959 c 28 § 72.01.120. Prior: 1901 c 119 § 10, part; RRS § 10906.]

72.01.130 Destruction of buildings—Reconstruction. If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately under the direction of the department, by and with the advice and consent of the governor, and the expenses thereof shall be paid out of any unexpended funds appropriated to the department for any purpose, not to exceed one hundred thousand dollars: *Provided*, That if a specific appropriation for a particular project has been made by the legislature, only such funds exceeding the cost of such project may be expended for the purposes of this section. [1959 c 28 § 72.01.130. Prior: 1957 c 25 § 1; 1891 c 147 § 29; RRS § 10908. Formerly RCW 72.04.090.]

72.01.140 Agricultural and farm economy. The secretary shall:

(1) Make a survey, investigation, and classification of the lands connected with the state institutions under his control, and determine which thereof are of such character as to be most profitably used for agricultural, horticultural, dairying, and stock raising purposes, taking into consideration the costs of making them ready for cultivation, the character of the soil, its depth and fertility, the number of kinds of crops to which it is adapted, the local climatic conditions, the local annual rainfall, the water supply upon the land or available, the needs of all state institutions for the food products that can be grown or produced, and the amount and character of the available labor of inmates at the several institutions;

(2) Establish and carry on suitable farming operations at the several institutions under his control;

(3) Supply the several institutions with the necessary food products produced thereat;

(4) Exchange with, or furnish to, other institutions, food products at the cost of production;

(5) Sell and dispose of surplus food products produced. [1979 c 141 § 149; 1959 c 28 § 72.01.140. Prior: 1955 c 195 § 4(7), (8), (9), (10) and (11); 1921 c 7 § 39; RRS § 10797. Formerly RCW 43.28.020, part.]

72.01.150 Industrial economy. The secretary shall:

(1) Establish, install and operate, at the several state institutions under his control, such industries and industrial plants as may be most suitable and beneficial to the inmates thereof, and as can be operated at the least relative cost and the greatest relative benefit to the state, taking into consideration the needs of the state institutions for industrial products, and the amount and character of labor of inmates available at the several institutions;

(2) Supply the several institutions with the necessary industrial products produced thereat;

(3) Exchange with, or furnish to, other state institutions industrial products at prices to be fixed by the department, not to exceed in any case the price of such products in the open market;

(4) Sell and dispose of surplus industrial products produced, to such persons and under such rules, regulations, terms, and prices as may be in his judgment for the best interest of the state;

(5) Sell products of the plate mill to any department, to any state, county, or other public institution and to any governmental agency, of this or any other state under such rules, regulations, terms, and prices as may be in his judgment for the best interests of the state. [1979 c 141 § 150; 1959 c 28 § 72.01.150. Prior: 1955 c 195 § 4(12), (13), (14), (15) and (16); 1923 c 101 § 1; 1921 c 7 § 40; RRS § 10798. Formerly RCW 43.28.020, part.]

Institutional industries commission: Chapter 72.60 RCW.

72.01.180 Dietitian—Duties—Travel expenses. The secretary shall have the power to select a member of the faculty of the University of Washington, or the Washington State University, skilled in scientific food analysis and dietetics, to be known as the state dietitian, who shall make and furnish to the department food analyses showing the relative food value, in respect to cost, of food products, and advise the department as to the quantity, comparative cost, and food values, of proper diets for the inmates of the state institutions under the control of the department. The state dietitian shall receive travel expenses while engaged in the performance of his duties in accordance with RCW 43.03-.050 and 43.03.060 as now existing or hereafter amended. [1979 c 141 § 152; 1975-'76 2nd ex.s. c 34 § 166; 1959 c 28 § 72.01.180. Prior: 1921 c 7 § 32; RRS § 10790. Formerly RCW 43.19.150.]

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

72.01.190 Fire protection. The secretary may enter into an agreement with a city or town adjacent to any state institution for fire protection for such institution. [1979 c 141 § 153; 1959 c 28 § 72.01.190. Prior: 1947 c 188 § 1; Rem. Supp. 1947 § 10898a. Formerly RCW 72.04.140.]

72.01.200 Employment of teachers—Exceptions. The several penal and reformatory institutions of the state may employ certificated teachers to carry on their educational work, except for the educational programs provided pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended, and all such

teachers so employed shall be eligible to membership in the state teachers' retirement fund. [1979 1st ex.s. c 217 § 6; 1959 c 28 § 72.01.200. Prior: 1947 c 211 § 1; Rem. Supp. 1947 § 10319-1. Formerly RCW 72.04.130.]

Effective date—Severability—1979 1st ex.s. c 217: See notes following RCW 28A.58.770.

Educational facilities for state schools for the deaf and blind: RCW 72.05.140.

Teachers' retirement: Chapter 41.32 RCW.

72.01.210 Institutional chaplains—Appointment. The secretary is hereby directed and empowered to appoint chaplains for the state correctional institutions for convicted felons; and chaplains for the correctional institutions for juveniles found delinquent by the juvenile courts, and one chaplain, or more chaplains as may be approved by the secretary for other custodial, correctional and mental institutions. The chaplains so appointed shall have the qualifications and shall be compensated in an amount, as shall hereafter be recommended by the department and approved by the state personnel board. [1979 c 141 § 154; 1967 c 58 § 1; 1959 c 33 § 1; 1959 c 28 § 72.01.210. Prior: 1955 c 248 § 1. Formerly RCW 72.04.160.]

State personnel board: RCW 41.06.110.

72.01.220 Institutional chaplains—Duties. It shall be the duty of the chaplains at the respective institutions mentioned in RCW 72.01.210, under the direction of the department, to conduct religious services and to give religious and moral instruction to the inmates of the institutions, and to attend to their spiritual wants. They shall counsel with and interview the inmates concerning their social and family problems, and shall give assistance to the inmates and their families in regard to such problems. [1959 c 28 § 72.01.220. Prior: 1955 c 248 § 2. Formerly RCW 72.04.170.]

72.01.230 Institutional chaplains—Offices, chapels, supplies. The chaplains at the respective institutions mentioned in RCW 72.01.210 shall be provided with the offices and chapels at their institutions, and such supplies as may be necessary for the carrying out of their duties. [1959 c 28 § 72.01.230. Prior: 1955 c 248 § 3. Formerly RCW 72.04.180.]

72.01.240 Supervisor of chaplains. The secretary is hereby empowered to appoint one of the chaplains, authorized by RCW 72.01.210, to act as supervisor of chaplains for the department, in addition to his duties at one of the institutions designated in RCW 72.01.210. [1979 c 141 § 155; 1959 c 28 § 72.01.240. Prior: 1955 c 248 § 4. Formerly RCW 72.04.190.]

72.01.260 Outside ministers not excluded. Nothing contained in RCW 72.01.210 through *72.01.250 shall be so construed as to exclude ministers of any denomination from giving gratuitous religious or moral instruction to prisoners under such reasonable rules and regulations as the secretary may prescribe. [1979 c 141 § 156; 1959 c 28 § 72.01.260. Prior: 1929 c 59 § 2; Code

1881 § 3297; RRS § 10236-1. Formerly RCW 72.08.210.]

*Reviser's note: RCW 72.01.250 was repealed by 1971 ex.s. c 189 § 17.

72.01.270 Gifts, acceptance of. The secretary shall have the power to receive, hold and manage all real and personal property made over to the department by gift, devise or bequest, and the proceeds and increase thereof shall be used for the benefit of the institution for which it is received. [1979 c 141 § 157; 1959 c 28 § 72.01.270. Prior: 1901 c 119 § 8; RRS § 10904. Formerly RCW 72.04.050.]

72.01.280 Quarters for personnel—Charges. The superintendent of each public institution and the assistant physicians, steward, accountant and chief engineer of each hospital for the mentally ill may be furnished with quarters, household furniture, board, fuel, and lights for themselves and their families, and the secretary may, when in his opinion any public institution would be benefited by so doing, extend this privilege to any officer at any of the public institutions under his control. The words "family" or "families" used in this section shall be construed to mean only the spouse and dependent children of an officer. Employees may be furnished with quarters and board for themselves. The secretary shall charge and collect from such officers and employees the full cost of the items so furnished, including an appropriate charge for depreciation of capital items. [1979 c 141 § 158; 1959 c 39 § 3; 1959 c 28 § 72.01.280. Prior: 1957 c 188 § 1; 1907 c 166 § 6; 1901 c 119 § 6; RRS § 10903. Formerly RCW 72.04.040.]

72.01.282 Quarters for personnel—Deposit of receipts. All moneys received by the secretary of social and health services from charges made pursuant to RCW 72.01.280 shall be deposited by him in the state general fund. [1979 c 141 § 159; 1959 c 210 § 1.]

72.01.290 Record of patients and inmates. The department shall keep at its office, accessible only to the secretary and to proper officers and employees, and to other persons authorized by the secretary, a record showing the residence, sex, age, nativity, occupation, civil condition and date of entrance, or commitment of every person, patient, inmate or convict, in the several public institutions governed by the department, the date of discharge of every person from the institution, and whether such discharge is final: *Provided*, That in addition to this information the superintendents for the hospitals for the mentally ill shall also state the condition of the person at the time of leaving the institution. The record shall also state if the person is transferred from one institution to another and to what institution; and if dead the date and cause of death. This information shall be furnished to the department by the several institutions, and also such other obtainable facts as the department may from time to time require, not later than the fifth day of each month for the month preceding, by the chief executive officer of each public institution, upon blank forms which the department may prescribe. [1979

c 141 § 160; 1959 c 28 § 72.01.290. Prior: 1907 c 166 § 9; 1901 c 119 § 13; RRS § 10910. Formerly RCW 72.04.110.]

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.01.300 Accounting systems. The secretary shall have the power, and it shall be his duty, to install and maintain in the department a proper cost accounting system of accounts for each of the institutions under the control of the department, for the purpose of detecting and avoiding unprofitable expenditures and operations. [1979 c 141 § 161; 1959 c 28 § 72.01.300. Prior: 1921 c 7 § 43; RRS § 10801. Formerly RCW 43.19.160.]

72.01.310 Political influence forbidden. Any officer, including the secretary, or employee of the department or of the institutions under the control of the department, who, by solicitation or otherwise, exercises his influence, directly or indirectly, to influence other officers or employees of the state to adopt his political views or to favor any particular person or candidate for office, shall be removed from his office or position by the proper authority. [1979 c 141 § 162; 1959 c 28 § 72.01.310. Prior: 1901 c 119 § 15; RRS § 10917. Formerly RCW 72.04.150.]

72.01.320 Annual reports to legislature and governor—Contents. The secretary shall examine into the conditions and needs of the several state institutions under his control and report in writing to the governor the condition of each institution.

The secretary shall also provide the governor and legislature a full report of the activities of his department each fiscal year, incorporating therein suggestions respecting legislation for the benefit of the several institutions under his control and in the interests of improved administration generally. [1979 c 141 § 163; 1977 c 75 § 84; 1959 c 28 § 72.01.320. Prior: 1955 c 195 § 5. (i) 1901 c 119 § 14; RRS § 10915. (ii) 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.030.]

72.01.370 Leaves of absence for inmates—Grounds. The superintendents of the state penitentiary, the state reformatory, the state honor camps and such other penal institutions as may hereafter be established, may, subject to the approval of the secretary of social and health services, grant leaves of absence to inmates confined in such institutions to:

- (1) Go to the bedside of the inmate's wife, husband, child, mother or father, or other member of the inmate's immediate family who is seriously ill;
- (2) Attend the funeral of a member of the inmate's immediate family listed in subsection (1) of this section;
- (3) Participate in athletic contests, and;
- (4) Perform labor in connection with the industrial or agricultural programs of such institutions. [1979 c 141 § 164; 1959 c 40 § 1.]

72.01.380 Leaves of absence for inmates—Rules—Restrictions—Costs. The secretary of social

and health services is authorized to make rules and regulations providing for the conditions under which inmates will be granted leaves of absence, and providing for safeguards to prevent escapes while on leave of absence: *Provided*, That leaves of absence granted to inmates under RCW 72.01.370 shall not allow or permit any inmate to go beyond the boundaries of this state. The secretary of social and health services shall also make rules and regulations requiring the reimbursement of the state from the inmate granted leave of absence, or his family, for the actual costs incurred arising from any leave of absence granted under the authority of RCW 72.01.370, subsections (1) and (2): *Provided further*, That no state funds shall be expended in connection with leaves of absence granted under RCW 72.01.370, subsections (1) and (2), unless such inmate and his immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence. [1979 c 141 § 165; 1959 c 40 § 2.]

72.01.410 Transfer of child under sixteen convicted of crime amounting to felony. Whenever any child under the age of sixteen is convicted in the courts of this state of a crime amounting to a felony, and is committed for a term of confinement in a correctional institution wherein adults are confined, the secretary of social and health services may transfer such child to a juvenile correctional institution, or to such other institution as is now, or may hereafter be authorized by law to receive such child, until such time as the child arrives at the age of eighteen years, whereupon the child shall be returned to the institution of original commitment. Notice of such transfers shall be given to the clerk of the committing court and the parents, guardian, or next of kin of such child, if known. [1979 c 141 § 166; 1959 c 140 § 1.]

Child not to be confined with adult convicts: RCW 13.04.115.

Male juveniles may be transferred to correctional institution: RCW 72.13.070.

Male prisoners to be received at reformatory: RCW 72.12.050.

72.01.430 Transfer of equipment, supplies, livestock between institutions—Notice—Conditions. The secretary of social and health services, notwithstanding any provision of law to the contrary, is hereby authorized to transfer equipment, livestock and supplies between the several institutions within the department without reimbursement to the transferring institution excepting, however, any such equipment donated by organizations for the sole use of such transferring institutions. Whenever transfers of capital items are made between institutions of the department, notice thereof shall be given to the director of the department of general administration accompanied by a full description of such items with inventory numbers, if any. [1979 c 141 § 167; 1967 c 23 § 1; 1961 c 193 § 1.]

72.01.450 Use of facilities, equipment and personnel by school districts and institutions of higher learning authorized. The secretary of social and health services of the state of Washington is authorized to enter into agreements with any school district or any institution of higher learning for the use of the facilities, equipment

and personnel of any state institution of the department, for the purpose of conducting courses of education, instruction or training in the professions and skills utilized by one or more of the institutions, at such times and under such circumstances and with such terms and conditions as may be deemed appropriate. [1979 c 141 § 168; 1970 ex.s. c 50 § 2; 1967 c 46 § 1.]

72.01.452 Use of facilities, equipment and personnel by state agencies, counties, cities or political subdivisions. The secretary is authorized to enter into an agreement with any agency of the state, a county, city or political subdivision of the state for the use of the facilities, equipment and personnel of any institution of the department for the purpose of conducting courses of education, instruction or training in any professional skill having a relationship to one or more of the functions or programs of the department. [1979 c 141 § 169; 1970 ex.s. c 50 § 3.]

72.01.454 Use of facilities by community service organizations, nonprofit associations, etc. The secretary may permit the use of the facilities of any state institution by any community service organization, nonprofit corporation, group or association for the purpose of conducting a program of education, training, entertainment or other purpose, for the residents of such institutions, if determined by the secretary to be beneficial to such residents or a portion thereof. [1979 c 141 § 170; 1970 ex.s. c 50 § 5.]

72.01.458 Use of files and records for courses of education, instruction and training at institutions. In any course of education, instruction or training conducted in any state institution of the department use may be made of selected files and records of such institution, notwithstanding the provisions of any statute to the contrary. [1970 ex.s. c 50 § 4.]

72.01.460 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands. (1) Any lease of public lands with outdoor recreation potential authorized by the department of social and health services shall be open and available to the public for compatible recreational use unless the department of social and health services determines that the leased land should be closed in order to prevent damage to crops or other land cover, to improvements on the land, to the lessee, or to the general public or is necessary to avoid undue interference with carrying forward a departmental program. Any lessee may file an application with the department of social and health services to close the leased land to any public use. The department shall cause written notice of the impending closure to be posted in a conspicuous place in the department's Olympia office, at the principal office of the institution administering the land, and in the office of the county auditor in which the land is located thirty days prior to the public hearing. This notice shall state the parcel or parcels involved and shall indicate the time and place of the public hearing. Upon a determination by the department that posting is not necessary, the lessee shall desist

from posting. Upon a determination by the department that posting is necessary, the lessee shall post his leased premises so as to prohibit recreational uses thereon. In the event any such lands are so posted, it shall be unlawful for any person to hunt or fish, or for any person other than the lessee or his immediate family to use any such posted land for recreational purposes.

(2) The department of social and health services may insert the provisions of subsection (1) of this section in all leases hereafter issued. [1979 c 141 § 171; 1969 ex.s. c 46 § 2.]

72.01.480 Agreements with nonprofit organizations to provide services for persons admitted or committed to institutions. The secretary of social and health services is authorized to enter into agreements with any nonprofit corporation or association for the purpose of providing and coordinating voluntary and community based services for the treatment or rehabilitation of persons admitted or committed to any institution under the supervision of the department of social and health services. [1979 c 141 § 172; 1970 ex.s. c 50 § 1.]

Severability—1970 ex.s. c 50: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 50 § 8.] This applies to RCW 72.01.450–72.01.458, 72.01.480 and 72.40.031.

72.01.490 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure. See RCW 64.08.090.

**Chapter 72.02
ADULT CORRECTIONS**

Sections	
72.02.040	Secretary acting for department exercises powers and duties.
72.02.100	Earnings, clothing, transportation and subsistence payments upon release of certain prisoners.
72.02.110	Weekly payments to certain released prisoners.

72.02.040 Secretary acting for department exercises powers and duties. The secretary of social and health services acting for the department shall exercise all powers and perform all duties prescribed by law with respect to the administration of any adult correctional program by the department. [1970 ex.s. c 18 § 57; 1959 c 28 § 72.02.040. Prior: 1957 c 272 § 16. Formerly RCW 43.28.110.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.02.100 Earnings, clothing, transportation and subsistence payments upon release of certain prisoners. Any person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the state board of prison terms and paroles, or who is discharged from custody upon expiration of sentence, or who is ordered discharged from custody by a court of appropriate jurisdiction, shall be

entitled to retain his earnings from labor or employment while in confinement and shall be supplied by the superintendent of the state correctional facility with suitable and presentable clothing, the sum of forty dollars for subsistence, and transportation by the least expensive method of public transportation not to exceed the cost of one hundred dollars to his place of residence or the place designated in his parole plan, or to the place from which committed if such person is being discharged on expiration of sentence, or discharged from custody by a court of appropriate jurisdiction: *Provided*, That up to sixty additional dollars may be made available to the parolee for necessary personal and living expenses upon application to and approval by such person's parole officer. If in the opinion of the superintendent suitable arrangements have been made to provide the person to be released with suitable clothing and/or the expenses of transportation, the superintendent may consent to such arrangement. If the superintendent has reasonable cause to believe that the person to be released has ample funds, with the exception of earnings from labor or employment while in confinement, to assume the expenses of clothing, transportation, or the expenses for which payments made pursuant to RCW 72.02.100 or 72.02.110 or any one or more of such expenses, the person released shall be required to assume such expenses. [1971 ex.s. c 171 § 1.]

72.02.110 Weekly payments to certain released prisoners. As state, federal or other funds are available, the secretary of the department of social and health services or his designee is authorized, in his discretion, not to provide the forty dollars subsistence money or the optional sixty dollars to a person or persons released as described in RCW 72.02.100, and instead to utilize the authorization and procedure contained in this section relative to such person or persons.

Any person designated by the secretary serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the state board of prison terms and paroles, or is discharged from custody upon expiration of sentence, or is ordered discharged from custody by a court of appropriate jurisdiction, shall receive the sum of fifty-five dollars per week for a period of up to six weeks. The initial weekly payment shall be made to such person upon his release or parole by the superintendent of the institution. Subsequent weekly payments shall be made to such person by the probation and parole officer at the office of such probation or parole officer. In addition to the initial six weekly payments provided for in this section, a probation and parole officer and his district supervisor may, at their discretion, continue such payments up to a maximum of twenty additional weeks when they are satisfied that such person is actively seeking employment and that such payments are necessary to continue the efforts of such person to gain employment: *Provided*, That if, at the time of release or parole, in the opinion of the superintendent funds are otherwise available to such person, with the exception of earnings from labor or employment

while in confinement, such weekly sums of money or part thereof shall not be provided to such person.

When a person receiving such payments provided for in this section becomes employed, he may continue to receive payments for two weeks after the date he becomes employed but payments made after he becomes employed shall be discontinued as of the date he is first paid for such employment: *Provided*, That no person shall receive payments for a period exceeding the twenty-six week maximum as established in this section.

The secretary of the department of social and health services may annually adjust the amount of weekly payment provided for in this section to reflect changes in the cost of living and the purchasing power of the sum set for the previous year. [1971 ex.s. c 171 § 2.]

Chapter 72.04A

PROBATION AND PAROLE

Sections

- 72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to secretary.
- 72.04A.070 Plans and recommendations for conditions of supervision of parolees.
- 72.04A.080 Parolees subject to supervision of department—Progress reports.
- 72.04A.090 Violations of parole or probation—Revision of parole conditions—Detention.

Counties may provide probation and parole services: RCW 36.01.070.

Prison terms, probation, and parole board—Supervisor's duties: Chapter 9.95 RCW.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to secretary. The powers and duties of the state board of prison terms and paroles, relating to (1) the supervision of parolees of any of the state penal institutions, (2) the supervision of persons placed on probation by the courts, and (3) duties with respect to persons conditionally pardoned by the governor, are transferred to the secretary of social and health services.

This section shall not be construed as affecting any of the remaining powers and duties of the board of prison terms and paroles including, but not limited to, the following:

(1) The fixing of minimum terms of confinement of convicted persons, or the reconsideration of its determination of minimum terms of confinement;

(2) Determining when and under what conditions a convicted person may be released from custody on parole, and the revocation or suspension of parole or the modification or revision of the conditions of the parole, of any convicted person. [1979 c 141 § 173; 1967 c 134 § 7.]

72.04A.070 Plans and recommendations for conditions of supervision of parolees. The secretary of social and health services shall cause to be prepared plans and recommendations for the conditions of supervision under which each inmate of any state penal institutions who is

eligible for parole may be released from custody. Such plans and recommendations shall be submitted to the board of prison terms and paroles which may, at its discretion, approve, reject, or revise or amend such plans and recommendations for the conditions of supervision of release of inmates on parole, and, in addition, the board may stipulate any special conditions of supervision to be carried out by a probation and parole officer. [1979 c 141 § 174; 1967 c 134 § 9.]

72.04A.080 Parolees subject to supervision of department—Progress reports. Each inmate hereafter released on parole shall be subject to the supervision of the department of social and health services, and the probation and parole officers of the department shall be charged with the preparation of progress reports of parolees and to give guidance and supervision to such parolees within the conditions of a parolee's release from custody. Copies of all progress reports prepared by the probation and parole officers shall be supplied to the board of prison terms and paroles for their files and records. [1979 c 141 § 175; 1967 c 134 § 10.]

72.04A.090 Violations of parole or probation—Revision of parole conditions—Detention. Whenever a parolee breaches a condition or conditions under which he was granted parole, or violates any law of the state or rules and regulations of the board of prison terms and paroles, any probation and parole officer may arrest, or cause the arrest and suspension of parole of, such parolee without a warrant, pending a determination by the board. The facts and circumstances of such conduct of the parolee shall be reported by the probation and parole officer, with recommendations, to the board of prison terms and paroles, who may order the revocation or suspension of parole, revise or modify the conditions of parole or take such other action as may be deemed appropriate in accordance with RCW 9.95.120. The board of prison terms and paroles, after consultation with the secretary of social and health services, shall make all rules and regulations concerning procedural matters, which shall include the time when state probation and parole officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the board of prison terms and paroles to perform its functions under this section.

The probation and parole officers shall have like authority and power regarding the arrest and detention of a probationer who has breached a condition or conditions under which he was granted probation by the superior court, or violates any law of the state, pending a determination by the superior court.

In the event a probation and parole officer shall arrest or cause the arrest and suspension of parole of a parolee or probationer in accordance with the provisions of this section, such parolee or probationer shall be confined and detained in the county jail of the county in which the parolee or probationer was taken into custody, and the sheriff of such county shall receive and keep in the county jail, where room is available, all prisoners delivered thereto by the probation and parole officer, and

such parolees shall not be released from custody on bail or personal recognizance, except upon approval of the board of prison terms and paroles and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole. [1979 c 141 § 176; 1969 c 98 § 1; 1967 c 134 § 11.]

Severability—Effective date—1969 c 98: See notes following RCW 9.95.003.

Suspension, revision of parole, retaking of violator, powers and duties of parole and probation officers, etc.: RCW 9.95.120.

Chapter 72.05

CHILDREN AND YOUTH SERVICES

Sections

72.05.010	Declaration of purpose.
72.05.020	Definitions.
72.05.130	Powers and duties of department—In general— "Close security" institutions designated.
72.05.140	Educational facilities and programs for state schools for the deaf and blind.
72.05.150	"Minimum security" institutions.
72.05.152	Juvenile forest camps—Industrial insurance benefits prohibited—Exceptions.
72.05.154	Juvenile forest camps—Industrial insurance— Eligibility for benefits—Exceptions.
72.05.160	Contracts with other divisions, agencies authorized.
72.05.170	Counseling and consultative services.
72.05.200	Parental right to provide treatment preserved.
72.05.210	Juvenile court law—Applicability—Synonymous terms.
72.05.300	Parental schools—Leases, purchases—Powers of school district.
72.05.310	Parental schools—Personnel.

Comic books: Chapter 19.18 RCW.

Educational programs for residential school residents: RCW 28A.58.770–28A.58.778.

Financial responsibility for cost of detention of minor: RCW 13.16.085.

Handicapped children, parental responsibility, order of commitment: Chapter 26.40 RCW.

Prisoners and incorrigible juvenile delinquents to be received at reformatory: RCW 72.12.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

Uniform interstate compact on juveniles: Chapter 13.24 RCW.

72.05.010 Declaration of purpose. The purposes of RCW 72.05.010 through 72.05.210 are: To provide for every child with behavior problems, mentally and physically handicapped persons, and deaf and blind children, within the purview of RCW 72.05.010 through 72.05.210, as now or hereafter amended, such care, guidance and instruction, control and treatment as will best serve the welfare of the child or person and society; to insure nonpolitical and qualified operation, supervision, management, and control of the Green Hill school, the Maple Lane school, the Naselle Youth Camp, the Cedar Creek Youth Camp, the Mission Creek Youth Camp, Echo Glen, the Cascadia Diagnostic Center, Lakeland Village, Rainier school, the Yakima Valley school, Interlake school, Fircrest school, the Francis Haddon Morgan Center, the Child Study and Treatment Center and Secondary School of Western State Hospital, the state school for the blind, the state school for the deaf, and like residential state schools, camps and centers

hereafter established, and to place them under the department of social and health services; and to provide for the persons committed or admitted to those schools that type of care, instruction, and treatment most likely to accomplish their rehabilitation and restoration to normal citizenship. [1979 1st ex.s. c 217 § 7; 1979 c 141 § 177; 1959 c 28 § 72.05.010. Prior: 1951 c 234 § 1.]

Effective date—Severability—1979 1st ex.s. c 217: See notes following RCW 28A.58.770.

72.05.020 Definitions. As used in this chapter, unless the context requires otherwise:

"Department" means the department of social and health services. [1979 c 141 § 178; 1970 ex.s. c 18 § 58; 1959 c 28 § 72.05.020. Prior: 1951 c 234 § 2. Formerly RCW 43.19.260.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.05.130 Powers and duties of department—In general—"Close security" institutions designated. The department shall establish, maintain, operate and administer a comprehensive program for the custody, care, education, treatment, instruction, guidance, control and rehabilitation of all persons who may be committed or admitted to institutions, schools, or other facilities controlled and operated by the department, except for the programs of education provided pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended, which shall be established, operated and administered by the school district conducting the program, and in order to accomplish these purposes, the powers and duties of the secretary shall include the following:

(1) The assembling, analyzing, tabulating, and reproduction in report form, of statistics and other data with respect to children with behavior problems in the state of Washington, including, but not limited to, the extent, kind, and causes of such behavior problems in the different areas and population centers of the state. Such reports shall not be open to public inspection, but shall be open to the inspection of the governor and to the superior court judges of the state of Washington.

(2) The establishment and supervision of diagnostic facilities and services in connection with the custody, care, and treatment of mentally and physically handicapped, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the department, or who may be referred for such diagnosis and treatment by any superior court of this state. Such diagnostic services may be established in connection with, or apart from, any other state institution under the supervision and direction of the secretary. Such diagnostic services shall be available to the superior courts of the state for persons referred for such services by them prior to commitment, or admission to, any school, institution, or other facility. Such diagnostic services shall also be available to other departments of the state.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the department, and the transfer of such persons

from any such institution, school, or facility to any other such school, institution, or facility: *Provided*, That where a person has been committed to a minimum security institution, school, or facility by any of the superior courts of this state, a transfer to a close security institution shall be made only with the consent and approval of such court. This shall not apply to the state school for the deaf or the state school for the blind.

(4) The supervision of parole, discharge, or other release, and the post-institutional placement of all persons committed to Green Hill school and Maple Lane school, or such as may be assigned, paroled, or transferred therefrom to other facilities operated by the department. Green Hill school and Maple Lane school are hereby designated as "close security" institutions to which shall be given the custody of children with the most serious behavior problems. [1979 1st ex.s. c 217 § 8; 1979 c 141 § 179; 1959 c 28 § 72.05.130. Prior: 1951 c 234 § 13. Formerly RCW 43.19.370.]

Effective date—Severability—1979 1st ex.s. c 217: See notes following RCW 28A.58.770.

72.05.140 Educational facilities and programs for state schools for the deaf and blind. The department, in order to provide educational facilities and programs for persons admitted or committed to the state schools for the deaf and blind, is authorized either to:

(1) Enter into an agreement with the school district within which the institution is situated, or

(2) Provide a comprehensive school program in connection with any institution as if that institution were itself a local school system.

In the event that either option is exercised, all teachers shall meet all certification requirements and the program shall conform to the usual standards defined by law or by regulations of the state board of education or the office of the state superintendent of public instruction and/or other recognized national certificating agencies. [1979 1st ex.s. c 217 § 9; 1979 c 141 § 180; 1959 c 28 § 72.05.140. Prior: 1951 c 234 § 14. Formerly RCW 43.19.380.]

Effective date—Severability—1979 1st ex.s. c 217: See notes following RCW 28A.58.770.

Employment of teachers—Exceptions: RCW 72.01.200.

72.05.150 "Minimum security" institutions. The department shall have power to acquire, establish, maintain, and operate "minimum security" facilities for the care, custody, education, and treatment of children with less serious behavior problems. Such facilities may include parental schools or homes, farm units, and forest camps. Admission to such minimum security facilities shall be by juvenile court commitment or by transfer as herein otherwise provided. In carrying out the purposes of this section, the department may establish or acquire the use of such facilities by gift, purchase, lease, contract, or other arrangement with existing public entities, and to that end the secretary may execute necessary leases, contracts, or other agreements. In establishing forest camps, the department may contract with other divisions of the state and the federal government; including, but not limited to, the department of natural

resources, the state parks and recreation commission, the U.S. forest service, and the national park service, on a basis whereby such camps may be made as nearly as possible self-sustaining. Under any such arrangement the contracting agency shall reimburse the department for the value of services which may be rendered by the inmates of a camp. [1979 1st ex.s. c 67 § 6; 1979 c 141 § 181; 1959 c 28 § 72.05.150. Prior: 1951 c 234 § 15. Formerly RCW 43.19.390.]

Severability—1979 1st ex.s. c 67: See note following RCW 19.28.330.

72.05.152 Juvenile forest camps—Industrial insurance benefits prohibited—Exceptions. No inmate of a juvenile forest camp who is affected by this chapter or receives benefits pursuant to RCW 72.05.152 and 72.05.154 shall be considered as an employee or to be employed by the state or the department of social and health services or the department of natural resources, nor shall any such inmate, except those provided for in RCW 72.05.154, come within any of the provisions of the workmen's compensation act, or be entitled to any benefits thereunder, whether on behalf of himself or any other person. All moneys paid to inmates shall be considered a gratuity. [1973 c 68 § 1.]

Effective date—1973 c 68: "This 1973 act shall take effect on July 1, 1973." [1973 c 68 § 3.] This applies to RCW 72.05.152 and 72.05.154.

72.05.154 Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions. From and after July 1, 1973, any inmate working in a juvenile forest camp established and operated pursuant to RCW 72.05.150, pursuant to an agreement between the department of social and health services and the department of natural resources shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions provided by this section.

No inmate as described in RCW 72.05.152, until released upon an order of parole by the department of social and health services, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter amended, or to the benefits of chapter 51.36 RCW relating to medical aid: *Provided*, That RCW 72.05.152 and 72.05.154 shall not affect the eligibility, payment or distribution of benefits for any industrial injury to the inmate which occurred prior to his existing commitment to the department of social and health services.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1973 c 68 § 2.]

72.05.160 Contracts with other divisions, agencies authorized. In carrying out the provisions of RCW 72.05.010 through 72.05.210, the department shall have

power to contract with other divisions or departments of the state or its political subdivisions, with any agency of the federal government, or with any private social agency. [1979 c 141 § 182; 1959 c 28 § 72.05.160. Prior: 1951 c 234 § 16. Formerly RCW 43.19.400.]

72.05.170 Counseling and consultative services. The department may provide professional counseling services to delinquent children and their parents, consultative services to communities dealing with problems of children and youth, and may give assistance to law enforcement agencies by means of juvenile control officers who may be selected from the field of police work. [1977 ex.s. c 80 § 45; 1959 c 28 § 72.05.170. Prior: 1955 c 240 § 1. Formerly RCW 43.19.405.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.05.200 Parental right to provide treatment preserved. Nothing in RCW 72.05.010 through 72.05.210 shall be construed as limiting the right of a parent, guardian or person standing in loco parentis in providing any medical or other remedial treatment recognized or permitted under the laws of this state. [1959 c 28 § 72.05.200. Prior: 1951 c 234 § 19. Formerly RCW 43.19.410.]

72.05.210 Juvenile court law—Applicability—Synonymous terms. RCW 72.05.010 through 72.05.210 shall be construed in connection with and supplemental to the juvenile court law as embraced in chapter 13.04 RCW. Process, procedure, probation by the court prior to commitment, and commitment shall be as provided therein. The terms "delinquency", "delinquent" and "delinquent children" as used and applied in the juvenile court law and the terms "behavior problems" and "children with behavior problems" as used in RCW 72.05.010 through 72.05.210 are synonymous and interchangeable. [1959 c 28 § 72.05.210. Prior: 1951 c 234 § 20. Formerly RCW 43.19.420.]

72.05.300 Parental schools—Leases, purchases—Powers of school district. The department may execute leases, with options to purchase, of parental school facilities now or hereafter owned and operated by school districts, and such leases with options to purchase shall include such terms and conditions as the secretary of social and health services deems reasonable and necessary to acquire such facilities. Notwithstanding any provisions of the law to the contrary, the board of directors of each school district now or hereafter owning and operating parental school facilities may, without submission for approval to the voters of the school district, execute leases, with options to purchase, of such parental school facilities, and such leases with options to purchase shall include such terms and conditions as the board of directors deems reasonable and necessary to dispose of such facilities in a manner beneficial to the school district. The department if it enters into a lease, with an option to purchase, of parental school facilities, may exercise its option and purchase such parental school facilities; and a school district may, if it enters into a lease,

with an option to purchase, of parental school facilities, upon exercise of the option to purchase by the department, sell such parental school facilities and such sale may be accomplished without first obtaining a vote of approval from the electorate of the school district. [1979 c 141 § 183; 1959 c 28 § 72.05.300. Prior: 1957 c 297 § 2. Formerly RCW 43.28.160.]

State parks and recreation commission may acquire parental school facilities from school districts: RCW 43.51.230.

72.05.310 Parental schools—Personnel. The department may employ personnel, including but not limited to, superintendents and all other officers, agents, and teachers necessary to the operation of parental schools. [1979 c 141 § 184; 1959 c 28 § 72.05.310. Prior: 1957 c 297 § 3. Formerly RCW 43.28.170.]

Chapter 72.06 MENTAL HEALTH

Sections

72.06.010	"Department" defined.
72.06.050	Mental health—Dissemination of information and advice by department.
72.06.060	Mental health—Psychiatric outpatient clinics.
72.06.070	Mental health—Cooperation of department and state hospitals with local programs.

Reviser's note: 1979 1st ex.s. c 108 which was to be added to this chapter has been codified as chapter 72.72 RCW.

Alcoholism program: Chapter 70.96A RCW.

State hospitals for the mentally ill: Chapter 72.23 RCW.

72.06.010 "Department" defined. "Department" for the purposes of this chapter shall mean the department of social and health services. [1970 ex.s. c 18 § 59; 1959 c 28 § 72.06.010. Prior: 1957 c 272 § 9. Formerly RCW 43.28.040.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.06.050 Mental health—Dissemination of information and advice by department. The department shall cooperate with other departments of state government and its political subdivisions in the following manner:

(1) By disseminating educational information relating to the prevention, diagnosis and treatment of mental illness.

(2) Upon request therefor, by advising public officers, organizations and agencies interested in the mental health of the people of the state. [1977 ex.s. c 80 § 46; 1959 c 28 § 72.06.050. Prior: 1955 c 136 § 2. Formerly RCW 43.28.600.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.06.060 Mental health—Psychiatric outpatient clinics. The department is hereby authorized to establish and maintain psychiatric outpatient clinics at such of the several state mental institutions as the secretary shall designate for the prevention, diagnosis and treatment of mental illnesses, and the services of such clinics shall be available to any citizen of the state in need thereof,

when determined by a physician that such services are not otherwise available, subject to the rules of the department. [1979 c 141 § 185; 1977 ex.s. c 80 § 47; 1959 c 28 § 72.06.060. Prior: 1955 c 136 § 3. Formerly RCW 43.28.610.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.06.070 Mental health—Cooperation of department and state hospitals with local programs. The department and the several state hospitals for the mentally ill shall cooperate with local mental health programs by providing necessary information, recommendations relating to proper after care for patients paroled or discharged from such institutions and shall also supply the services of psychiatrists, psychologists and other persons specialized in mental illness as they are available. [1959 c 28 § 72.06.070. Prior: 1955 c 136 § 4. Formerly RCW 43.28.620.]

Chapter 72.08

STATE PENITENTIARY

Sections

72.08.010	What constitutes penitentiary.
72.08.020	Visitation.
72.08.040	Duties of superintendent.
72.08.045	Temporary rules.
72.08.050	Employment of intemperate person prohibited.
72.08.080	Control of revenues.
72.08.090	Fiscal reports to auditor.
72.08.101	Corrective, rehabilitative and reformatory programs and procedures.
72.08.102	Rules and regulations for administration, supervision, security and disciplinary measures.
72.08.103	Prisoners' funds and property—Superintendent as custodian—Disposition.
72.08.120	Rules and regulations.
72.08.130	Water supply—Buildings.
72.08.160	Interest in contract or purchase forbidden.
72.08.170	Rewards.
72.08.380	Letters of inmates may be withheld.
72.08.390	Leaves of absence for inmates.

Civil rights, restoration: Chapter 9.96 RCW.

Commitment and executions: Chapter 10.70 RCW.

Control and treatment of venereal diseases: Chapter 70.24 RCW.

Convict labor, contract system barred: State Constitution Art. 2 § 29.

Convict-made goods: Chapter 19.20 RCW.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Fugitives of this state: Chapter 10.34 RCW.

Officers and guards as peace officers: RCW 9.94.050.

Pardon, governor's powers and duties: RCW 10.01.120 and 43.06.020.

Prison riot: RCW 9.94.010.

Prison terms, paroles and probation: Chapter 9.95 RCW.

Prisoners, state penal institutions: Chapter 9.94 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Solitary confinement: RCW 10.64.060.

72.08.010 What constitutes penitentiary. The entire area of lands situated near the city of Walla Walla, donated to the territory of Washington for penitentiary purposes by the people of Walla Walla, and all lands

acquired thereafter, together with all structures, buildings and inclosures thereon, are hereby declared to be, and they shall hereafter be known as, the state penitentiary. [1959 c 28 § 72.08.010. Prior: 1891 c 147 § 1; 1886 p 152 § 1; 1883 p 82 § 3; 1869 p 359 § 3; 1861 p 5 § 1; 1855 p 9 § 1; RRS § 10210.]

72.08.020 Visitation. It shall be the duty of the secretary to have an officer of the department visit the penitentiary once in each month and oftener if necessary. [1979 c 141 § 186; 1959 c 28 § 72.08.020. Prior: 1891 c 147 § 5; RRS § 10211.]

72.08.040 Duties of superintendent. It shall be the duty of the superintendent of the penitentiary:

(1) Under the order and direction of the department to prosecute all suits at law or in equity that may be necessary to protect the rights of the state in matters or property connected with the penitentiary and its management, such suits to be prosecuted by the attorney general, in the name of the department.

(2) To supervise the government, discipline and police of the penitentiary, and to enforce all orders and regulations of the department in respect to the penitentiary. He shall keep a registry of the convicts, in which shall be entered the names of each convict, the crime for which he is convicted, the period of his sentence, from what county sentenced, by what court sentenced, his nativity, to what degree educated, an accurate description of his person, and whether he has previously been confined in a prison in this or any other state, and if so where, and how he was discharged.

(3) To perform such other duties as may be prescribed by the department. [1969 c 56 § 1; 1959 c 28 § 72.08.040. Prior: 1891 c 147 § 7; 1888 p 169 §§ 8, 9; RRS § 10213.]

Records for vital statistics: RCW 70.58.270.

Superintendent, general provisions: RCW 72.01.060.

72.08.045 Temporary rules. When in his opinion an emergency exists, the superintendent may promulgate temporary rules for the governance of the penitentiary, which shall remain in effect until terminated by the secretary. [1979 c 141 § 187; 1959 c 28 § 72.08.045. Prior: 1891 c 147 § 5, part; RRS § 10211, part. Formerly RCW 72.08.020, part.]

72.08.050 Employment of intemperate person prohibited. No person shall be appointed to any office or be employed in the penitentiary on behalf of the state who is in the habit of intemperate use of liquors, and a single act of intemperance shall justify his discharge or removal. [1959 c 28 § 72.08.050. Prior: 1891 c 147 § 10; RRS § 10216.]

72.08.080 Control of revenues. All revenues of the penitentiary, unless herein otherwise provided, shall be paid to the superintendent who alone is authorized to receipt for the same and discharge from liability. When any sum of money is paid to the superintendent he shall cause the same to be properly entered on the books.

[1959 c 28 § 72.08.080. Prior: 1891 c 147 § 16; RRS § 10219.]

72.08.090 Fiscal reports to auditor. On payment of any moneys into the state treasury, the superintendent and state treasurer shall report to the auditor of state the amount so paid, and the state treasurer shall give the superintendent a receipt therefor, which receipt shall be filed with the auditor. [1959 c 28 § 72.08.090. Prior: 1891 c 147 § 17; RRS § 10220.]

72.08.101 Corrective, rehabilitative and reformatory programs and procedures. The secretary of social and health services shall provide for the establishment of programs and procedures for convicted persons at the state penitentiary, which are designed to be corrective, rehabilitative and reformatory of the undesirable behavior problems of such persons, as distinguished from programs and procedures essentially penal in nature. [1979 c 141 § 188; 1965 ex.s. c 9 § 3.]

72.08.102 Rules and regulations for administration, supervision, security and disciplinary measures. The secretary of social and health services is authorized to make rules and regulations for the administration, supervision, security and disciplinary measures inflicted upon convicted persons at the state penitentiary. [1979 c 141 § 189; 1965 ex.s. c 9 § 4.]

72.08.103 Prisoners' funds and property—Superintendent as custodian—Disposition. The superintendent shall be custodian of all funds and valuable personal property of a convicted person as shall be in his possession upon admission to the state penitentiary, or which shall be sent or brought to such person, or earned by him while in custody, or which shall be forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person's personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When a convicted person is released from the confines of the state penitentiary either on parole or discharge, all funds and valuable personal property in the possession of the superintendent belonging to such convicted person shall be delivered to him. [1965 ex.s. c 9 § 5.]

72.08.120 Rules and regulations. The secretary shall have power to make rules and regulations for the discipline, employment, instruction, education and compensation of prisoners in the Washington state penitentiary. [1979 c 141 § 190; 1959 c 28 § 72.08.120. Prior: 1927 c 305 § 2; RRS § 10223–2.]

72.08.130 Water supply—Buildings. The secretary shall have power to contract for the supply of water for said penitentiary, upon such terms as he shall deem to be for the best interests of the state, or furnish water themselves, at their option. The department shall have full power to erect any building or structure deemed

necessary, or to alter or improve the same, and to pay for the same from the fund appropriated for the use or support of the penitentiary, or from the earnings thereof, without advertising or contracting therefor: *Provided*, That no buildings or structure, the cost of which will exceed three thousand dollars, shall be erected or constructed without first obtaining the consent of the governor: *Provided further*, That such expenditure shall in no instance exceed ten thousand dollars without a special appropriation therefor by the state legislature. [1979 c 141 § 191; 1959 c 28 § 72.08.130. Prior: 1891 c 147 § 21; RRS § 10225.]

72.08.160 Interest in contract or purchase forbidden. No officer or employee of the penitentiary shall be interested, directly or indirectly, in any contract or purchase made or authorized to be made by anyone for or on behalf of the penitentiary. [1959 c 28 § 72.08.160. Prior: 1891 c 147 § 24; RRS § 10228.]

Misconduct of public officers: Chapter 42.20 RCW.

72.08.170 Rewards. The secretary of the department of social and health services or his designee shall have power to offer rewards not exceeding two hundred dollars, in the one case for the return of escaped convicts, and to pay the expenses of the apprehension, safekeeping and return of all escaped convicts by the officers of the penitentiary. He shall certify the amount of reward allowed and expenses incurred and prepare a voucher for the state treasurer, who shall draw his warrant for the amount found due out of any funds available therefor. [1973 c 106 § 32; 1959 c 28 § 72.08.170. Prior: 1891 c 147 § 27; RRS § 10231.]

Offer of rewards by governor: RCW 43.06.010(8).

72.08.380 Letters of inmates may be withheld. Whenever the superintendent of the state penitentiary withholds from mailing letters written by inmates of such institution, the superintendent shall forward such letters to the secretary of social and health services for study and the inmate shall be forthwith notified that such letter has been withheld from mailing and the reason for so doing. Letters forwarded to the secretary for study shall either be mailed within seven days to the addressee or, if deemed objectionable by the secretary, retained in a separate file for two years and then destroyed. [1979 c 141 § 192; 1959 c 28 § 72.08.380. Prior: 1957 c 61 § 1.]

72.08.390 Leaves of absence for inmates. See RCW 72.01.370, 72.01.380.

Chapter 72.12

STATE REFORMATORY

Sections

72.12.010	Management.
72.12.020	Control vested in secretary.
72.12.040	Subordinate officers—Personnel.
72.12.050	Prisoners to be received at reformatory.
72.12.070	Rules and regulations.
72.12.090	Business management.

- 72.12.100 Secretary's duty—Register of prisoners.
 72.12.140 Letters of inmates may be withheld.
 72.12.150 Leaves of absence for inmates.

Appointment of superintendent: RCW 72.01.060.

Civil rights, restoration: Chapter 9.96 RCW.

Commitment to: RCW 9.92.050.

Control and treatment of venereal diseases: Chapter 70.24 RCW.

Convict labor, contract system barred: State Constitution Art. 2 § 29.

Convict-made goods: Chapter 19.20 RCW.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Fugitives of this state: Chapter 10.34 RCW.

Officers and guards as peace officers: RCW 9.94.050.

Pardon, governor's powers and duties: RCW 10.01.120 and 43.06.020.

Prison riot: RCW 9.94.010.

Prison terms, paroles and probation: Chapter 9.95 RCW.

Prisoners, state penal institutions: Chapter 9.94 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Solitary confinement: RCW 10.64.060.

72.12.010 Management. The Washington state reformatory heretofore established and located at Monroe in Snohomish county shall be equipped and managed in the manner and for the purpose in this chapter hereinafter provided. [1959 c 28 § 72.12.010. Prior: 1927 c 212 § 1; 1907 c 167 § 1; RRS § 10280-1.]

72.12.020 Control vested in secretary. The government and control of the Washington state reformatory and of the prisoners sentenced thereto shall be vested in the secretary of social and health services. [1979 c 141 § 193; 1959 c 28 § 72.12.020. Prior: 1927 c 212 § 2; 1907 c 167 § 3; RRS § 10280-2.]

Appointment of superintendent: RCW 72.01.060.

72.12.040 Subordinate officers—Personnel. The superintendent, by and with the advice and consent of the director, shall appoint the physicians, and such subordinate officers, guards and employees as the number of prisoners or the needs of the institution may from time to time require. [1959 c 28 § 72.12.040. Prior: 1927 c 212 § 4; RRS § 10280-4.]

Appointment of personnel: RCW 72.01.060.

72.12.050 Prisoners to be received at reformatory. The secretary, through the superintendent of the reformatory shall receive all males between the ages of sixteen and thirty years who are sentenced to the reformatory on conviction of any criminal offense in any court having jurisdiction thereof and all male prisoners who may be removed from any other penal institution of the state as provided by law. All such persons shall be subject to the rules and regulations of the reformatory and the laws relating to the administration of such institution to the same extent as the other inmates of such institution. [1979 c 141 § 194; 1959 c 251 § 1; 1959 c 28 § 72.12.050. Prior: 1955 c 242 § 1; 1927 c 212 § 5; RRS § 10280-5.]

Child not to be confined with adult convicts: RCW 13.04.115.

Commitment to state reformatory: RCW 9.92.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

72.12.070 Rules and regulations. The secretary shall have power to make rules and regulations for the discipline, employment, instruction, education and removal of prisoners in the reformatory. The discipline imposed shall be reformatory in character. [1979 c 141 § 195; 1959 c 28 § 72.12.070. Prior: 1927 c 212 § 8; 1907 c 167 § 17; RRS § 10280-8.]

72.12.090 Business management. The business management, sale of products and manufactures, and the auditing and keeping of accounts pertaining thereto shall be vested in the secretary under such regulations as may be prescribed by the director of financial management. [1979 c 141 § 196; 1959 c 28 § 72.12.090. Prior: 1927 c 212 § 13; 1907 c 167 § 19; RRS § 10280-13.]

72.12.100 Secretary's duty—Register of prisoners. It shall be the duty of the secretary to maintain such control over prisoners committed to the reformatory as shall prevent them from committing crime, best secure their self-support, and accomplish their reformation. When any prisoner shall be received into the reformatory under sentence thereto, the secretary shall cause to be entered in a register the date of such admission, the name, age, nativity and nationality, with such facts as can be ascertained of parentage, or early education and social influences as seem to indicate the constitutional defects and social tendencies of the prisoner and the best probable plan of treatment. In such register shall be entered quarterly, or oftener, minutes of observed improvement or deterioration of character affecting the standing or situation of such prisoner, the circumstances of the final release, and any subsequent facts of the personal history which may be brought to the knowledge of the secretary or superintendent. [1979 c 141 § 197; 1959 c 28 § 72.12.100. Prior: 1927 c 212 § 14; RRS § 10280-14. Formerly RCW 72.12.100 and 72.12.110.]

Records for vital statistics: RCW 70.58.270.

72.12.140 Letters of inmates may be withheld. Whenever the superintendent of the state reformatory withholds from mailing letters written by inmates of such institution, the superintendent shall forward such letters to the secretary of social and health services for study and the inmate shall be forthwith notified that such letter has been withheld from mailing and the reason for so doing. Letters forwarded to the secretary for study shall either be mailed within seven days to the addressee or, if deemed objectionable by the secretary, retained in a separate file for two years and then destroyed. [1979 c 141 § 198; 1959 c 28 § 72.12.140. Prior: 1957 c 61 § 1.]

72.12.150 Leaves of absence for inmates. See RCW 72.01.370, 72.01.380.

Chapter 72.13

CORRECTIONAL INSTITUTION FOR MALE
FELONS—RECEPTION AND CLASSIFICATION
CENTER

Sections

72.13.010	Institution established.
72.13.040	Superintendent—Appointment—Qualifications.
72.13.050	Associate superintendents.
72.13.060	Personnel subject to merit system.
72.13.070	Male juveniles may be transferred to institution.
72.13.080	Powers and duties of superintendent.
72.13.090	Prisoner's living arrangements.
72.13.100	Industrial, vocational and agricultural programs.
72.13.110	Reception and classification center.
72.13.120	Sentence—Commitment to reception center.
72.13.130	Powers of court or judge not impaired.
72.13.140	Reception center staff, board—Certificate of recommended treatment—Cooperation by other state agencies.
72.13.150	Persons to be received for classification and placement.
72.13.160	Secretary to determine placement—What laws govern confinement, parole and discharge.
72.13.170	Rules and regulations.
72.13.180	Leaves of absence for inmates.

72.13.010 Institution established. There is hereby established under the supervision and control of the secretary of social and health services a correctional institution for the confinement and rehabilitation of male persons convicted of a felony and such other persons transferred to such institution as hereinafter provided. [1979 c 141 § 199; 1959 c 214 § 1.]

72.13.040 Superintendent—Appointment—Qualifications. The superintendent of the correctional institution established by this chapter shall be appointed by the secretary. The superintendent shall have such administrative experience and possess such qualifications as shall be fixed by the personnel board, or such merit system board as shall be established by law having jurisdiction of personnel within the department of social and health services, with the advice and approval of the secretary. [1979 c 141 § 200; 1959 c 214 § 4.]

Superintendents—Appointment—Terms—Salaries—Assistants: RCW 72.01.060.

72.13.050 Associate superintendents. The superintendents [superintendent], subject to the approval of the secretary, shall appoint such associate superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, he shall appoint one of the officers of the institution to act as superintendent during such period of absence, illness or incapacity, subject to the approval of the secretary. [1979 c 141 § 201; 1959 c 214 § 5.]

72.13.060 Personnel subject to merit system. The superintendent and all subordinate officers and employees of such institution shall be under the jurisdiction of the state personnel board or such merit system board as shall be hereafter established by law having jurisdiction

within the department of social and health services. [1979 c 141 § 202; 1959 c 214 § 6.]

72.13.070 Male juveniles may be transferred to institution. The secretary shall have authority to transfer to the correctional institution male juvenile delinquents or male juveniles convicted of a crime, who may hereafter be committed to the department, or who are now confined at facilities under the department for the custody of juvenile delinquents: *Provided*, That such juveniles shall not be retained in such institution after eighteen years of age: *Provided further*, That the secretary shall retain custody of such juveniles for the purpose of returning, in his discretion, such juveniles to the transferring institution or such other facilities of the department as he shall deem appropriate. [1979 c 141 § 203; 1959 c 214 § 7.]

Male prisoners to be received at reformatory: RCW 72.12.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

72.13.080 Powers and duties of superintendent. The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules and regulations of the department, the superintendent shall have supervision and management of the institution, the grounds and buildings, subordinate officers and employees, and the prisoners committed or transferred to such institution and the custody of such persons until released as provided by law.

(2) Subject to the approval of the secretary, appoint all subordinate officers and employees, who shall be removable from employment by the superintendent, subject to the merit system rules of the state personnel board as may be established by law having jurisdiction of the officers and employees of the department of social and health services.

(3) The superintendent shall be the custodian of the personal property of all inmates in the institution and shall make rules and regulations governing the accounting and disposition of all moneys received and earned by the inmates, not inconsistent with law, and subject to the approval of the secretary. [1979 c 141 § 204; 1959 c 214 § 8.]

72.13.090 Prisoner's living arrangements. Each prisoner in the correctional institution shall be provided with a single cell: *Provided, however*, That multiple type living arrangements may be provided in forestry or other labor camps maintained in conjunction with the institution. [1959 c 214 § 9.]

72.13.100 Industrial, vocational and agricultural programs. The superintendent, subject to the approval of the secretary and the institutional industries commission, shall be authorized to establish such industrial, vocational and agricultural programs as will be most beneficial to the inmates of such institution. [1979 c 141 § 205; 1959 c 214 § 10.]

Institutional industries commission: Chapter 72.60 RCW.

72.13.110 Reception and classification center. There shall be a department in such institution known as the reception and classification center under the supervision of an associate superintendent which, subject to the rules and regulations of the department, shall be charged with the function of receiving and classifying all male persons committed or transferred to the institution, taking into consideration age, type of crime for which committed, physical condition, behavior, attitude and prospects for reformation for the purposes of confinement and treatment of male offenders convicted of offenses punishable by imprisonment in the state penitentiary or state reformatory, except offenders convicted of crime and sentenced to death. [1959 c 214 § 11.]

72.13.120 Sentence—Commitment to reception center. Any male offender convicted of an offense punishable by imprisonment in the state penitentiary or the state reformatory, except an offender sentenced to death, shall, notwithstanding any inconsistent provision of law, be sentenced to imprisonment in a penal institution under the jurisdiction of the department of social and health services without designating the name of such institution, and be committed to the reception center for classification, confinement and placement in such correctional facility under the supervision of the department of social and health services as the secretary of social and health services shall deem appropriate. [1979 c 141 § 206; 1959 c 214 § 12.]

72.13.130 Powers of court or judge not impaired. Nothing herein contained, however, shall be construed to restrict or impair the power of any court or judge having jurisdiction to pronounce sentence upon a person to whom this act applies, to fix the term of imprisonment and to order his commitment, according to law, nor to deny the right of any such court or judge to sentence to imprisonment; nor to deny the right of any such court or judge to suspend sentence or the execution of judgment thereon or to make any other disposition of the case pursuant to law; but in case the punishment imposed be imprisonment in the state penitentiary or the state reformatory, the warrant of commitment shall commit the person convicted to the reception center established by this act for classification, confinement and placement as provided by this chapter. [1959 c 214 § 13.]

72.13.140 Reception center staff, board—Certificate of recommended treatment—Cooperation by other state agencies. The secretary shall appoint a staff for the reception center to interview, test, classify, and supervise offenders committed to the center. Such staff shall consist of such employees as the secretary shall determine to be adequate for prompt and effective classification. There shall be within the reception center a classification board, which should be composed of such members of the staff of the reception center as the secretary may require. After making a study and investigation of the facts of the cases of the persons committed to the reception center as the secretary may require, the board shall make and file in the department a certificate in writing, recommending the state correctional institution best

sued to receive the offender during the term of his confinement, the type of program to be followed and the approximate length of such treatment. The state board of prison terms and paroles and other state agencies shall cooperate with the department in obtaining necessary investigative materials concerning offenders committed to the reception center and supply the reception center with necessary information regarding social histories and community background. [1979 c 141 § 207; 1959 c 214 § 14.]

Board of prison terms and paroles: Chapter 9.95 RCW.

72.13.150 Persons to be received for classification and placement. The superintendent of the correctional institution established by this chapter shall receive all male persons convicted of a felony by the superior court and committed by the superior court to the reception center for classification and placement in such facility as the secretary shall designate, and all persons transferred thereto by the secretary from the state reformatory and state penitentiary, and other correctional facilities of the department. The superintendent shall only receive prisoners for classification and study in the institution upon presentation of certified copies of a judgment, sentence and order of commitment of the superior court, along with other reports as may have been made in reference to each individual prisoner. [1979 c 141 § 208; 1959 c 214 § 15.]

72.13.160 Secretary to determine placement—What laws govern confinement, parole and discharge. The secretary shall determine the state correctional institution in which the offender shall be confined during his term of imprisonment. The confinement of any offender shall be governed by the laws applicable to the institution to which he is certified for confinement, but his parole and discharge shall be governed by the laws applicable to the sentence imposed by the court. [1979 c 141 § 209; 1959 c 214 § 16.]

72.13.170 Rules and regulations. The secretary may make, amend and repeal rules consistent with and in furtherance of the provisions of this chapter. [1979 c 141 § 210; 1959 c 214 § 17.]

72.13.180 Leaves of absence for inmates. See RCW 72.01.370, 72.01.380.

Chapter 72.15

WASHINGTON CORRECTIONAL INSTITUTION FOR WOMEN

Sections	
72.15.010	Institution established—Name.
72.15.020	Superintendent—Appointment—Qualifications.
72.15.030	Associate superintendents.
72.15.040	Powers and duties of superintendent.
72.15.050	Industrial, vocational and agricultural programs.
72.15.060	Commitment of convicted female persons—Procedure as to death sentences.
72.15.070	Rules and regulations.

72.15.010 Institution established—Name. There is hereby established under the supervision and control of the secretary of social and health services a correctional institution for the confinement, rehabilitation and reformation of female persons convicted of a felony and sentenced and committed to such institution for a term of confinement by the superior courts. Such institution shall be known as the Washington correctional institution for women. [1979 c 141 § 211; 1967 ex.s. c 122 § 1.]

72.15.020 Superintendent—Appointment—Qualifications. The superintendent of the Washington correctional institution for women shall be appointed by the secretary, and shall have such administrative and correctional experience and possess such qualifications as shall be determined by the state personnel board, subject to advice and approval of the secretary. [1979 c 141 § 212; 1967 ex.s. c 122 § 4.]

72.15.030 Associate superintendents. The superintendent, subject to the approval of the secretary, shall appoint such associate superintendents as shall be deemed necessary, who shall have such qualifications as shall be determined by the state personnel board subject to the advice and approval of the secretary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, one of the associate superintendents of such institution as may be designated by the secretary shall act as superintendent during such period of absence, illness or incapacity. [1979 c 141 § 213; 1967 ex.s. c 122 § 5.]

72.15.040 Powers and duties of superintendent. The superintendent shall have the following powers and duties:

(1) Subject to the rules and regulations of the department, the superintendent shall be responsible for the supervision and management of the institution, the grounds and buildings, the subordinate officers and employees, and the prisoners committed, admitted or transferred to such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the rules and regulations of the department and the state personnel board, to appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of all funds and valuable personal property of a convicted person as may be in her possession upon admission to the institution, or which shall be sent or brought to such person, or earned by her while in custody, or which shall be forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person's personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When a convicted person is released from the confines of the institution either on parole, transfer, or discharge, all funds and valuable personal property in the possession of the superintendent

belonging to such convicted person shall be delivered to her. [1967 ex.s. c 122 § 6.]

72.15.050 Industrial, vocational and agricultural programs. The superintendent, subject to the approval of the secretary and the institutional industries commission, shall be authorized to establish such industrial, vocational and agricultural programs as would be most beneficial to the inmates of such institution. [1979 c 141 § 214; 1967 ex.s. c 122 § 7.]

72.15.060 Commitment of convicted female persons—Procedure as to death sentences. All female persons convicted in the superior courts of a felony and sentenced to a term of confinement, shall be committed to the Washington correctional institution for women. Female persons sentenced to death shall be committed to the Washington correctional institution for women, notwithstanding the provisions of RCW 10.70.060, except that the death warrant shall provide for the execution of such death sentence at the Washington state penitentiary as provided by RCW 10.70.050, and the secretary of social and health services shall transfer to the Washington state penitentiary any female offender sentenced to death not later than seventy-two hours prior to the date fixed in the death warrant for the execution of the death sentence. The provisions of this section shall not become effective until the secretary of social and health services certifies to the chief justice of the supreme court, the chief judge of each division of the court of appeals, the superior courts and the prosecuting attorney of each county that the facilities and personnel for the implementation of commitments are ready to receive persons committed to the Washington correctional institution for women under the provisions of this section. [1971 c 81 § 134; 1967 ex.s. c 122 § 8.]

72.15.070 Rules and regulations. The superintendent, subject to the approval of the secretary, shall make, amend, and repeal rules and regulations for the administration, supervision, discipline, and security of the Washington correctional institution for women. [1979 c 141 § 215; 1967 ex.s. c 122 § 9.]

Chapter 72.16 GREEN HILL SCHOOL

Sections

72.16.010
72.16.020

School established.
Purpose of school.

Commitment: Chapter 13.04 RCW.

Control and treatment of venereal diseases: Chapter 70.24 RCW.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Educational programs for residential school residents: RCW 28A.58.770–28A.58.778.

Financial responsibility for cost of detention of minor: RCW 13.16.085.

Fugitives of this state: Chapter 10.34 RCW.

Juvenile courts: Chapter 13.04 RCW.

Male juveniles may be transferred to correctional institution: RCW 72.13.070.

Officers and guards as peace officers: RCW 9.94.050.

Prisoners, state penal institutions: Chapter 9.94 RCW.

Prisoners and incorrigible juvenile delinquents to be received at reformatory: RCW 72.12.050.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

72.16.010 School established. There is established at Chehalis, Lewis county, an institution which shall be known as the Green Hill school. [1959 c 28 § 72.16.010. Prior: 1955 c 230 § 1. (i) 1909 c 97 p 256 § 1; RRS § 4624. (ii) 1907 c 90 § 1; 1890 p 271 § 1; RRS § 10299.]

72.16.020 Purpose of school. The said school shall be for the keeping and training of all boys between the ages of eight and eighteen years who are residents of the state of Washington and who are lawfully committed to said institution. [1959 c 28 § 72.16.020. Prior: (i) 1909 c 97 p 256 § 2; RRS § 4625. (ii) 1890 p 272 § 2; RRS § 10300.]

Chapter 72.18

CORRECTIONAL INSTITUTION FOR JUVENILES

Sections

72.18.010	Institution established.
72.18.040	Superintendent—Appointment—Qualifications.
72.18.050	Associate superintendents.
72.18.060	Personnel subject to merit system.
72.18.070	Powers and duties of superintendent.
72.18.080	Rules and regulations.

Child not to be confined with adult convicts: RCW 13.04.115.

Commitment to state reformatory: RCW 9.92.050.

Educational programs for residential school residents: RCW 28A.58.770—28A.58.778.

Male juveniles may be transferred to correctional institution: RCW 72.13.070.

Reformatory—Incorrigible juvenile delinquents: RCW 72.12.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

72.18.010 Institution established. There is hereby established under the supervision and control of the secretary of social and health services a correctional institution for the reception, diagnosis, confinement and rehabilitation of juveniles committed by the juvenile courts to the department of social and health services. [1979 c 141 § 216; 1959 c 277 § 1.]

72.18.040 Superintendent—Appointment—Qualifications. The superintendent of the correctional institution established by this chapter shall be appointed by the secretary. The superintendent shall have such administrative experience and possess such qualifications as shall be fixed by the personnel board, or such merit system board as shall be established by law having jurisdiction of personnel within the department of social and health services, with the advice and approval of the secretary. [1979 c 141 § 217; 1959 c 277 § 4.]

Superintendents—Appointment—Terms—Salaries—Assistants: RCW 72.01.060.

72.18.050 Associate superintendents. The superintendent, subject to the approval of the secretary, shall appoint such associate superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, he shall appoint one of the officers of the institution to act as superintendent during such period of absence, illness or incapacity, subject to the approval of the secretary. [1979 c 141 § 218; 1959 c 277 § 5.]

72.18.060 Personnel subject to merit system. The superintendent and all subordinate officers and employees of such institution shall be under the jurisdiction of the state personnel board or such merit system board as shall be hereafter established by law having jurisdiction within the department of social and health services. [1979 c 141 § 219; 1959 c 277 § 6.]

72.18.070 Powers and duties of superintendent. The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules and regulations of the department, the superintendent shall have supervision and management of the institution, of the grounds and buildings, subordinate officers and employees, and of the juveniles received at such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the approval of the secretary, appoint all subordinate officers and employees, who shall be removable from employment by the superintendent, subject to the merit system rules of the state personnel board as may be established by law having jurisdiction of the officers and employees of the department of social and health services.

(3) The superintendent shall be the custodian of the personal property of all juveniles in the institution and shall make rules and regulations governing the accounting and disposition of all moneys received by such juveniles, not inconsistent with law, and subject to the approval of the secretary. [1979 c 141 § 220; 1959 c 277 § 7.]

72.18.080 Rules and regulations. The secretary may make, amend and repeal rules and regulations for the administration of the juvenile correctional institution established by this chapter in furtherance of the provisions of this chapter and not inconsistent with law. [1979 c 141 § 221; 1959 c 277 § 8.]

Chapter 72.19

JUVENILE CORRECTIONAL INSTITUTION IN KING COUNTY

Sections

72.19.010	Institution established—Location.
72.19.020	Rules and regulations.
72.19.030	Superintendent—Appointment—Qualifications.
72.19.040	Associate superintendents—Appointment—Acting superintendent.

- 72.19.050 Powers and duties of superintendent.
- 72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination.
- 72.19.070 General obligation bond issue to provide buildings—Authorized—Form, terms, etc.
- 72.19.100 General obligation bond issue to provide buildings—Juvenile correctional institution building bond redemption fund—Payment from and prior charge on retail sales tax.
- 72.19.110 General obligation bond issue to provide buildings—Legislature may provide additional means of revenue.
- 72.19.120 General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds.
- 72.19.130 Referral to electorate.

Educational programs for residential school residents: RCW 28A.58.770–28A.58.778.

72.19.010 Institution established—Location. There is hereby established under the supervision and control of the secretary of social and health services a correctional institution for the confinement and rehabilitation of juveniles committed by the juvenile courts to the department of social and health services. Such institution shall be situated upon publicly owned lands within King county, under the supervision of the department of natural resources, which land is located in the vicinity of Echo Lake and more particularly situated in Section 34, Township 24 North, Range 7 East W.M. and that portion of Section 3, Township 23 North, Range 7 East W.M. lying north of U.S. Highway 10, together with necessary access routes thereto, all of which tract is leased by the department of natural resources to the department of social and health services for the establishment and construction of the correctional institution authorized and provided for in this chapter. [1979 c 141 § 222; 1963 c 165 § 1; 1961 c 183 § 1.]

72.19.020 Rules and regulations. The secretary may make, amend and repeal rules and regulations for the administration of the juvenile correctional institution established by this chapter in furtherance of the provisions of this chapter and not inconsistent with law. [1979 c 141 § 223; 1961 c 183 § 4.]

72.19.030 Superintendent—Appointment—Qualifications. The superintendent of the correctional institution established by this chapter shall be appointed by the secretary. The superintendent shall have such administrative and correctional experience and possess such qualifications as shall be determined by the state personnel board subject to the advice and approval of the secretary. [1979 c 141 § 224; 1963 c 165 § 3.]

72.19.040 Associate superintendents—Appointment—Acting superintendent. The superintendent, subject to the approval of the secretary, shall appoint such associate superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, one of the associate superintendents of such institution shall act as superintendent during such period of absence, illness or incapacity as

may be designated by the secretary. [1979 c 141 § 225; 1963 c 165 § 4.]

72.19.050 Powers and duties of superintendent. The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules and regulations of the department, the superintendent shall have the supervision and management of the institution, of the grounds and buildings, the subordinate officers and employees, and of the juveniles received at such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the rules and regulations of the department and the state personnel board, appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of the personal property of all juveniles in the institution and shall make rules and regulations governing the accounting and disposition of all moneys received by such juveniles, not inconsistent with the law, and subject to the approval of the secretary. [1979 c 141 § 226; 1963 c 165 § 5.]

72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination. The plans and construction of the juvenile correctional institution established by this chapter shall provide for adequate separation of the residential housing of the male juvenile from the female juvenile. In all other respects, the juvenile correctional programs for both boys and girls may be combined or separated as the secretary deems most reasonable and effective to accomplish the reformation, training and rehabilitation of the juvenile offender, realizing all possible economies from the lack of necessity for duplication of facilities. [1979 c 141 § 227; 1963 c 165 § 7.]

72.19.070 General obligation bond issue to provide buildings—Authorized—Form, terms, etc. For the purpose of providing needful buildings at the correctional institution for the confinement and rehabilitation of juveniles situated in King county in the vicinity of Echo Lake which institution was established by the provisions of this chapter, the state finance committee is hereby authorized to issue, at any time prior to January 1, 1970, general obligation bonds of the state of Washington in the sum of four million six hundred thousand dollars, or so much thereof as shall be required to finance the program above set forth, to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: *Provided*, That none of the bonds herein authorized shall be sold for less than the par value thereof, nor shall they bear interest at a rate in excess of four percent per annum.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may

be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1963 ex.s. c 27 § 1.]

72.19.100 General obligation bond issue to provide buildings—Juvenile correctional institution building bond redemption fund—Payment from and prior charge on retail sales tax. The juvenile correctional institution building bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by RCW 72.19.070 through 72.19.130. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and the state treasurer shall thereupon deposit such amount in said juvenile correctional institution building bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 35; 1963 ex.s. c 27 § 4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

72.19.110 General obligation bond issue to provide buildings—Legislature may provide additional means of revenue. The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and RCW 72.19.070 through 72.19.130 shall not be deemed to provide an exclusive method for such payment. [1963 ex.s. c 27 § 5.]

72.19.120 General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds. The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1963 ex.s. c 27 § 6.]

72.19.130 Referral to electorate. This act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1964, in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof. [1963 ex.s. c 27 § 7.]

Reviser's note: (1) "This act" consists of RCW 72.19.070 through 72.19.120.

(2) 1963 ex.s. c 27 became Referendum bill No. 13 which was approved by the electorate November 3, 1964.

Chapter 72.20 MAPLE LANE SCHOOL

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Prisoners, state penal institutions: Chapter 9.94 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Reformatory—Incorrigible juvenile delinquents: RCW 72.12.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

72.20.010 School established. There is established at Grand Mound, Thurston county, an institution which shall be known as the Maple Lane school. [1959 c 28 § 72.20.010. Prior: 1955 c 230 § 2; 1913 c 157 § 1; RRS § 4631.]

72.20.020 Management—Superintendent. The government, control and business management of such school shall be vested in the secretary. The secretary shall, with the approval of the governor, appoint a suitable superintendent of said school, and shall designate the number of subordinate officers and employees to be employed, and fix their respective salaries, and have power, with the like approval, to make and enforce all such rules and regulations for the administration, government and discipline of the school as the secretary may deem just and proper, not inconsistent with this chapter. [1979 c 141 § 228; 1959 c 39 § 1; 1959 c 28 § 72.20.020. Prior: 1913 c 157 § 3; RRS § 4633.]

Appointment of superintendent and subordinate employees, general provisions: RCW 72.01.060.

72.20.040 Duties of superintendent. The superintendent, subject to the direction and approval of the secretary shall:

(1) Have general supervision and control of the grounds and buildings of the institution, the subordinate

officers and employees, and the inmates thereof, and all matters relating to their government and discipline.

(2) Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the secretary, as may seem to him proper or necessary for the government of such institution and for the employment, discipline and education of the inmates, except for the program of education provided pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended, which shall be governed by the school district conducting the program.

(3) Exercise such other powers, and perform such other duties as the secretary may prescribe. [1979 1st ex.s. c 217 § 10; 1979 c 141 § 229; 1959 c 39 § 2; 1959 c 28 § 72.20.040. Prior: 1913 c 157 § 5; RRS § 4635.]

Effective date—Severability—1979 1st ex.s. c 217: See notes following RCW 28A.58.770.

72.20.050 Parole or discharge—Behavior credits. The department, acting with the superintendent, shall, under a system of marks, or otherwise, fix upon a uniform plan by which girls may be paroled or discharged from the school, which system shall be subject to revision from time to time. Each girl shall be credited for personal demeanor, diligence in labor or study and for the results accomplished, and charged for derelictions, negligence or offense. The standing of each girl shall be made known to her as often as once a month. [1959 c 28 § 72.20.050. Prior: 1913 c 157 § 8; RRS § 4638.]

72.20.060 Conditional parole—Apprehension on escape or violation of parole. Every girl shall be entitled to a trial on parole before reaching the age of twenty years, such parole to continue for at least one year unless violated. The superintendent and resident physician, with the approval of the secretary, shall determine whether such parole has been violated. Any girl committed to the school who shall escape therefrom, or who shall violate a parole, may be apprehended and returned to the school by any officer or citizen on written order or request of the superintendent. [1979 c 141 § 230; 1959 c 28 § 72.20.060. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

72.20.065 Intrusion—Enticement away of girls—Interference—Penalty. Any person who shall go upon the school grounds except on lawful business, or by consent of the superintendent, or who shall entice any girl away from the school, or who shall in any way interfere with its management or discipline, shall be guilty of a misdemeanor. [1959 c 28 § 72.20.065. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

72.20.070 Eligibility restricted. No girl shall be received in the Maple Lane school who is not of sound mind, or who is subject to epileptic or other fits, or is not possessed of that degree of bodily health which should render her a fit subject for the discipline of the school. It shall be the duty of the court committing her to cause such girl to be examined by a reputable physician to be appointed by the court, who will certify to the above facts, which certificate shall be forwarded to the school

with the commitment. Any girl who may have been committed to the school, not complying with the above requirements, may be returned by the superintendent to the court making the commitment, or to the officer or institution last having her in charge. The department shall arrange for the transportation of all girls to and from the school. [1959 c 28 § 72.20.070. Prior: 1913 c 157 § 10; RRS § 4640.]

72.20.090 Hiring out—Apprenticeships—Compensation. The superintendent shall have power to place any girl under the age of eighteen years at any employment for account of the institution or the girl employed, and receive and hold the whole or any part of her wages for the benefit of the girl less the amount necessary for her board and keep, and may also, with the consent of any girl over fourteen years of age, and the approval of the secretary endorsed thereon, execute indentures of apprenticeship, which shall be binding on all parties thereto. In case any girl so apprenticed shall prove untrustworthy or unsatisfactory, the superintendent may permit her to be returned to the school, and the indenture may thereupon be canceled. If such girl shall have an unsuitable employer, the superintendent may, with the approval of the secretary, take her back to the school, and cancel the indenture of apprenticeship. All indentures so made shall be filed and kept in the school. A system may also be established, providing for compensation to girls for services rendered, and payments may be made from time to time, not to exceed in the aggregate to any one girl the sum of twenty-five dollars for each year of service. [1979 c 141 § 232; 1959 c 28 § 72.20.090. Prior: 1913 c 157 § 12; RRS § 4642.]

Chapter 72.23

PUBLIC AND PRIVATE FACILITIES FOR MENTALLY ILL

Sections

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Commitment procedure: Chapter 71.02 RCW.

Commitment to veterans administration or other federal agency: RCW 73.36.165.

County hospitals: Chapter 36.62 RCW.

Division of mental health: Chapter 43.20A RCW.

Hospitalization charges: RCW 71.02.310.

Mental illness, commitment procedures, rights, etc: Chapter 71.05 RCW.

Out-of-state physicians, conditional license to practice in conjunction with institutions: RCW 18.71.095.

Private mental establishments: Chapter 71.12 RCW.

Procedure as to insane convicts: RCW 72.08.110.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Sexual psychopaths and psychopathic delinquents: Chapter 71.06 RCW.

State hospitals, allocation of patients: RCW 71.02.450.

72.23.010 Definitions. As used in this chapter, the following terms shall have the following meanings:

"Mentally ill person" shall mean any person who, pursuant to the definitions contained in RCW 71.05.020, as a result of a mental disorder presents a likelihood of serious harm to others or himself or is gravely disabled.

"Patient" shall mean a person under observation, care or treatment in a state hospital, or a person found mentally ill by the court, and not discharged from a state hospital, or other facility, to which such person had been ordered hospitalized.

"Licensed physician" shall mean an individual permitted to practice as a physician under the laws of the state, or a medical officer, similarly qualified, of the government of the United States while in this state in performance of his official duties.

"State hospital" shall mean any hospital operated and maintained by the state of Washington for the care of the mentally ill.

"Superintendent" shall mean the superintendent of a state hospital.

"Court" shall mean the superior court of the state of Washington.

"Resident" shall mean a resident of the state of Washington.

Wherever used in this chapter, the masculine shall include the feminine and the singular shall include the plural. [1974 ex.s. c 145 § 2; 1973 1st ex.s. c 142 § 3; 1959 c 28 § 72.23.010. Prior: 1951 c 139 § 2. Formerly RCW 71.02.010.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900–71.05.930.

72.23.020 State hospitals designated. There are hereby permanently located and established the following state hospitals: Western state hospital at Fort Steilacoom, Pierce county; eastern state hospital at

Medical Lake, Spokane county; and northern state hospital near Sedro Woolley, Skagit county. [1959 c 28 § 72.23.020. Prior: 1951 c 139 § 6. Formerly RCW 71.02.440.]

Allocation of patients: RCW 71.02.450.

72.23.030 Superintendent—Qualifications—Powers. The superintendent of a state hospital shall be a skillful practicing physician; he shall have control of the medical, therapeutic, and dietetic treatment of the patients, which shall include authority to cause the performance of all necessary surgery. The superintendent, subject to rules and regulations of the department, shall have control of the internal government and economy of a state hospital and shall appoint and direct all subordinate officers and employees. [1969 c 56 § 2; 1959 c 28 § 72.23.030. Prior: 1951 c 139 § 7. Formerly RCW 71.02.510.]

Appointment of superintendent: RCW 72.01.060.

72.23.040 Seal of hospital. The superintendent shall provide an official seal upon which shall be inscribed the statutory name of the hospital under his charge and the name of the state. He shall affix the seal of the hospital to any notice, order of discharge, or other paper required to be given by him or issued. [1959 c 28 § 72.23.040. Prior: 1951 c 139 § 8. Formerly RCW 71.02.540.]

72.23.050 Superintendent as witness—Exemptions from military duty. The superintendent shall not be required to attend any court as a witness in a civil or juvenile court proceedings, but parties desiring his testimony can take and use his deposition; nor shall he be required to attend as a witness in any criminal case, unless the court before which his testimony shall be desired shall, upon being satisfied of the materiality of his testimony require his attendance; and, in time of peace, he and all other persons employed at the hospital shall be exempt from performing military duty; and the certificate of the superintendent shall be evidence of such employment. [1979 1st ex.s. c 135 § 5; 1959 c 28 § 72.23.050. Prior: 1951 c 139 § 9. Formerly RCW 71.02.520.]

Severability—1979 1st ex.s. c 135: See note following RCW 2.36.060.

72.23.060 Gifts—Record—Use. The superintendent is authorized to accept and receive from any person or organization gifts of money or personal property on behalf of the state hospital under his charge, or on behalf of the patients therein. The superintendent is authorized to use such money or personal property for the purposes specified by the donor where such purpose is consistent with law. In the absence of a specified use the superintendent may use such money or personal property for the benefit of the state hospital under his charge or for the general benefit of the patients therein. The superintendent shall keep an accurate record of the amount or kind of gift, the date received, and the name and address of the donor. The superintendent may deposit any

money received as he sees fit upon the giving of adequate security. Any increase resulting from such gift may be used for the same purpose as the original gift. Gratuities received for services rendered by a state hospital staff in their official capacity shall be used for the purposes specified in this section. [1959 c 28 § 72.23-.060. Prior: 1951 c 139 § 10. Formerly RCW 71.02.600.]

72.23.070 Voluntary patients—Right to receive—Application—Review of condition and status—Minors, commitment procedure and requirements, rights. Pursuant to rules and regulations established by the department, a public or private facility may receive any person who is a suitable person for care and treatment as mentally ill, or for observation as to the existence of mental illness, upon the receipt of a written application of the person, or others on his behalf, in accordance with the following requirements:

(1) In the case of a person eighteen years of age or over, the application shall be voluntarily made by the person;

(2) In the case of a person thirteen years of age or under, the application may be voluntarily made by his parents, or by the parent, limited guardian as authorized, guardian, or other person entitled to his custody. When such person is more than thirteen years of age, such application must be accompanied by the written consent, knowingly and voluntarily given, of the minor. All such voluntary applications to a public agency shall be reviewed by the county mental health professionals, who shall submit a written report and evaluation with recommendations to the superintendent of such facility to which such application is made stating whether treatment is necessary and proper on a voluntary basis and evaluating the reasons for voluntary commitment. Such person's condition and status shall be reviewed by the professional person in charge of the facility or his designee at least once each one hundred eighty days. A person under eighteen years of age received into a public facility as a voluntary patient shall not be retained after he reaches eighteen years of age, but such person, upon reaching eighteen years of age, may apply for admission into a public or private facility as a voluntary patient.

(3) No minor over thirteen years of age shall be involuntarily committed to a state or private facility for care and treatment as mentally disordered, or for observation as to the existence of mental disorder, except in accordance with the following requirements:

(a) The facility must be certified by the department of social and health services to provide evaluation and treatment to persons under eighteen years of age suffering from mental disorders: *Provided*, That a physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility: *Provided further*, That a facility which is part of, or a part of, or operated by, the department of social and health services or any federal agency will not require certification.

(b) A petition shall be filed with the juvenile court by the person's parent, parents, limited guardian as authorized, guardian, or by the juvenile court itself. The petition shall set forth the reasons why commitment is necessary and what alternative courses of treatment have been explored. The juvenile court shall then conduct a hearing, at which the person under eighteen years of age shall be represented by an attorney, to determine whether commitment is clearly in the best interests of the person sought to be committed, and that no less restrictive alternative exists: *Provided*, That, if in the opinion of the designated county mental health professional a minor presents an imminent likelihood of serious harm to himself or others, he may be temporarily detained for up to seventy-two hours by a licensed facility pending petition to the juvenile court for further commitment.

(c) If the juvenile court determines that commitment is clearly necessary, it will issue an order approving such petition. If the juvenile court determines that a less restrictive alternative is desirable, it may order that alternatives be followed.

(d) If a person under the age of eighteen years is committed to a state or private facility pursuant to this section, the juvenile court recommending commitment shall require a report from the facility every one hundred eighty days that sets forth such facts as the juvenile court may require. Upon receipt of the report, the juvenile court shall undertake a review of the status of such person to determine whether or not it is still clearly in the best interests of the patient that he remain in the facility. If the juvenile court determines that further commitment is not clearly in the best interests of the patient, it shall order release upon such conditions as it deems necessary.

(e) Every person under the age of eighteen shall have all the rights provided for persons eighteen years of age or over under this chapter as now or hereafter amended except those rights specifically modified by this section: *Provided*, That the juvenile court rather than the superior court shall be responsible for any proceedings. A voluntarily admitted minor over thirteen years of age shall have the right to release on the next judicial day from the date of request unless a petition is filed in juvenile court by the professional person in charge of the facility or his designee on the grounds that the juvenile is dangerous to himself or others or that it would be in the best interests of the juvenile that he remain in the facility. Furthermore, should the patient and his parent, parents, limited guardian as authorized, or guardian both request his release, he shall be immediately released unless the professional person in charge of the facility objects immediately in writing to the juvenile court on the grounds that the person is dangerous to himself or others and that it would not be in the patient's best interests to be released. Should this occur, the juvenile court shall hold a hearing on the issue within five judicial days and determine whether the person should be released.

(f) Nothing in this section shall prohibit the professional person in charge of the facility in which the person is being treated from releasing him at any time

when, in the opinion of said professional person, further commitment would no longer be in the best interests of the patient.

Whenever a person is released by the professional person in charge of a facility under this section, said person shall, in writing, notify the juvenile court which committed the person for treatment.

(4) In the case of a person eighteen years of age or over for whom a limited guardian or guardian of the person has been appointed, such application shall be made by said limited guardian or guardian, when so authorized by proper court order in the limited guardianship or guardianship proceedings. [1977 ex.s. c 80 § 48; 1975 1st ex.s. c 199 § 11; 1974 ex.s. c 145 § 3; 1973 2nd ex.s. c 24 § 1; 1973 1st ex.s. c 142 § 4; 1971 ex.s. c 292 § 50; 1959 c 28 § 72.23.070. Prior: 1951 c 139 § 11; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.030.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900-71.05.930.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

Involuntary commitment procedure: Chapter 71.05 RCW.

Mental illness: Chapter 71.05 RCW.

72.23.080 Voluntary patients—Legal competency—Record. Any person received and detained in a state hospital pursuant to RCW 72.23.070 shall be deemed a voluntary patient and shall not suffer a loss of legal competency by reason of his application and admission. Upon the admission of a voluntary patient to a state hospital the superintendent shall immediately forward to the department the record of such patient showing the name, address, sex, age, place of birth, occupation, date of admission, name of nearest relative, and such other information as the department may from time to time require. [1959 c 28 § 72.23.080. Prior: 1951 c 139 § 12; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.040.]

72.23.100 Voluntary patients—Policy—Duration. It shall be the policy of the department to permit liberal use of the foregoing sections for the admission of those cases that can be benefited by treatment and returned to normal life and mental condition, in the opinion of the superintendent, within a period of six months. No person shall be carried as a voluntary patient for a period of more than one year. [1973 1st ex.s. c 142 § 5; 1959 c 28 § 72.23.100. Prior: 1951 c 139 § 14; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.060.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900-71.05.930.

72.23.110 Voluntary patients—Limitation as to number. If it becomes necessary because of inadequate facilities or staff, the department may limit applicants for voluntary admission in accordance with such rules and regulations as it may establish. The department may refuse all applicants for voluntary admission where lack

of adequate facilities or staff make such action necessary. [1959 c 28 § 72.23.110. Prior: 1951 c 139 § 15. Formerly RCW 71.02.070.]

72.23.120 Voluntary patients—Charges for hospitalization. Payment of hospitalization charges shall not be a necessary requirement for voluntary admission: *Provided, however,* The department may request payment of hospitalization charges, or any portion thereof, from the patient or relatives of the patient within the following classifications: Spouse, parents, or children. Where the patient or relatives within the above classifications refuse to make the payments requested, the department shall have the right to discharge such patient or initiate proceedings for involuntary hospitalization. The maximum charge shall be the same for voluntary and involuntary hospitalization. [1959 c 28 § 72.23.120. Prior: 1951 c 139 § 16. Formerly RCW 71.02.080.]

72.23.125 Temporary residential observation and evaluation of persons requesting treatment. The department is directed to establish at each state hospital a procedure, including the necessary resources, to provide temporary residential observation and evaluation of persons who request treatment, unless admitted under RCW 72.23.070. Temporary residential observation and evaluation under this section shall be for a period of not less than twenty-four hours nor more than forty-eight hours and may be provided informally without complying with the admission procedure set forth in RCW 72.23.070 or the rules and regulations established thereunder.

It is the intent of the legislature that temporary observation and evaluation as described in this section be provided in all cases except where an alternative such as: (1) Delivery to treatment outside the hospital, or (2) no need for treatment is clearly indicated. [1979 1st ex.s. c 215 § 18.]

72.23.130 History of patient. It shall be the duty of the superintendent to ascertain by diligent inquiry and correspondence, the history of each and every patient admitted to his hospital. [1959 c 28 § 72.23.130. Prior: 1951 c 139 § 40. Formerly RCW 71.02.530.]

72.23.160 Escape—Apprehension and return. If a patient shall escape from a state hospital the superintendent shall cause immediate search to be made for him and return him to said hospital wherever found. Notice of such escape shall be given to the committing court who may issue an order of apprehension and return directed to any peace officer within the state. Notice may be given to any sheriff or peace officer, who, when requested by the superintendent, may apprehend and detain such escapee or return him to the state hospital without warrant. [1959 c 28 § 72.23.160. Prior: 1951 c 139 § 43. Formerly RCW 71.02.630.]

72.23.170 Escape of patient—Penalty for assisting. Any person who procures the escape of any patient of any state hospital for the mentally ill, or institutions for psychopaths to which such patient has been lawfully

committed, or who advises, connives at, aids, or assists in such escape or conceals any such escape, is guilty of a felony and shall be punished by imprisonment in a state penal institution for a term of not more than five years or by a fine of not more than five hundred dollars or by both imprisonment and fine. [1959 c 28 § 72.23.170. Prior: 1957 c 225 § 1, part; 1949 c 198 § 20, part; Rem. Supp. 1949 § 6953-20, part. Formerly RCW 71.12.620, part.]

72.23.180 Discharge, parole, death, escape—Notice—Certificate of discharge. Whenever a patient dies, escapes, or is paroled or discharged from a state hospital, the superintendent shall immediately notify the clerk of the court which ordered such patient's hospitalization. A copy of such notice shall be given to the next of kin or next friend of such patient if their names or addresses are known or can, with reasonable diligence, be ascertained. Whenever a patient is discharged the superintendent shall issue such patient a certificate of discharge. Such notice or certificate shall give the date of parole, discharge, or death of said patient, and shall state the reasons for parole or discharge, or the cause of death, and shall be signed by the superintendent. [1959 c 28 § 72.23.180. Prior: 1951 c 139 § 44. Formerly RCW 71.02.640.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

72.23.190 Death—Report to coroner. In the event of the sudden or mysterious death of any patient at a state hospital, not on parole or escape therefrom, such fact shall be reported by the superintendent thereof to the coroner of the county in which the death occurs. [1959 c 28 § 72.23.190. Prior: 1951 c 139 § 45. Formerly RCW 71.02.660.]

72.23.200 Persons under eighteen—Confinement in adult wards. No mentally ill person under the age of sixteen years shall be regularly confined in any ward in any state hospital which ward is designed and operated for the care of the mentally ill eighteen years of age or over. No person of the ages of sixteen and seventeen shall be placed in any such ward, when in the opinion of the superintendent such placement would be detrimental to the mental condition of such a person or would impede his recovery or treatment. [1971 ex.s. c 292 § 52; 1959 c 28 § 72.23.200. Prior: 1951 c 139 § 46; 1949 c 198 § 17; Rem. Supp. 1949 § 6953-17. Formerly RCW 71.02.550.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

72.23.210 Persons under eighteen—Special wards and attendants. The department may designate one or more wards at one or more state hospitals as may be deemed necessary for the sole care and treatment of persons under eighteen years of age admitted thereto. Nurses and attendants for such ward or wards shall be selected for their special aptitude and sympathy with such young people, and occupational therapy and recreation shall be provided as may be deemed necessary for

their particular age requirements and mental improvement. [1971 ex.s. c 292 § 53; 1959 c 28 § 72.23.210. Prior: 1951 c 139 § 47; 1949 c 198 § 18; Rem. Supp. 1949 § 6953-18. Formerly RCW 71.02.560.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

72.23.230 Patient's property—Superintendent as custodian—Management and accounting. The superintendent of a state hospital shall be the custodian without compensation of such personal property of a patient involuntarily hospitalized therein as may come into the superintendent's possession while the patient is under the jurisdiction of the hospital. As such custodian, the superintendent shall have authority to disburse moneys from the patients' funds for the following purposes only and subject to the following limitations:

(1) The superintendent may disburse any of the funds in his possession belonging to a patient for such personal needs of that patient as may be deemed necessary by the superintendent; and

(2) Whenever the funds belonging to any one patient exceed the sum of three hundred dollars, the superintendent may apply the excess to the payment of the state hospitalization and/or outpatient charges of such patient except, reduction of such funds to a lesser amount may be made where necessary to qualify such patient for eligibility in any public or private program for the care, treatment, hospitalization, support, training, or rehabilitation of such patient, and to qualify such patient for the payment from any public or private program providing benefits for the payment of all or a portion of the costs of care, treatment hospitalization, support, training, or rehabilitation or for the discharge of the liabilities imposed by the provisions of RCW 71.02.411; and

(3) When a patient is paroled, the superintendent shall deliver unto the said patient all or such portion of the funds or other property belonging to the patient as the superintendent may deem necessary and proper in the interests of the patient's welfare, and the superintendent may during the parole period deliver to the patient such additional property or funds belonging to the patient as the superintendent may from time to time determine necessary and proper. When a patient is discharged from the jurisdiction of the hospital, the superintendent shall deliver to such patient all funds or other property belonging to the patient.

All funds held by the superintendent as custodian may be deposited in a single fund. Annual reports of receipts and expenditures shall be forwarded to the department, and shall be open to inspection by interested parties: *Provided*, That all interest accruing from, or as a result of the deposit of such moneys in a single fund shall be used by the superintendent for the general welfare of all the patients of such institution: *Provided, further*, That when the personal accounts of patients exceed three hundred dollars, the interest accruing from such excess shall be credited to the personal accounts of such patients. All such expenditures shall be accounted for by the superintendent.

The appointment of a guardian for the estate of such patient shall terminate the superintendent's authority to

pay state hospitalization charges upon the superintendent's receipt of a certified copy of letters of guardianship. Upon the guardian's request, the superintendent shall forward to such guardian any funds or other property of the patient remaining in the superintendent's possession, together with a final accounting of receipts and expenditures. [1971 c 82 § 1; 1959 c 60 § 1; 1959 c 28 § 72.23.230. Prior: 1953 c 217 § 2; 1951 c 139 § 49. Formerly RCW 71.02.570.]

Guardianship of estate: Chapters 11.88 and 11.92 RCW.

72.23.240 Patient's property—Delivery to superintendent as acquittance—Defense, indemnity. Upon receipt of a written request signed by the superintendent stating that a designated patient of such hospital is involuntarily hospitalized therein, and that no guardian of his estate has been appointed, any person, bank, firm or corporation having possession of any money, bank accounts, or choses in action owned by such patient, may, if the balance due does not exceed one thousand dollars, deliver the same to the superintendent and mail written notice thereof to such patient at such hospital. The receipt of the superintendent shall be full and complete acquittance for such payment and the person, bank, firm or corporation making such payment shall not be liable to the patient or his legal representatives. All funds so received by the superintendent shall be deposited in such patient's personal account at such hospital and be administered in accordance with this chapter.

If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the same without cost to the person, bank, firm or corporation effecting such delivery, and the state shall indemnify such person, bank, firm or corporation against any judgment rendered as a result of such proceeding. [1959 c 28 § 72.23.240. Prior: 1953 c 217 § 1. Formerly RCW 71.02.575.]

72.23.250 Funds donated to patients. The superintendent shall also have authority to receive funds for the benefit of individual patients and may disburse such funds according to the instructions of the donor of such funds. [1959 c 28 § 72.23.250. Prior: 1951 c 139 § 50. Formerly RCW 71.02.580.]

72.23.260 Federal patients—Agreements authorized. The department shall have the power, in the name of the state, to enter into contracts with any duly authorized representative of the United States government, providing for the admission to, and the separate or joint observation, maintenance, care, treatment and custody in, state hospitals of persons entitled to or requiring the same, at the expense of the United States, and contracts providing for the separate or joint maintenance, care, treatment or custody of such persons hospitalized in the manner provided by law, and to perform such contracts, which contracts shall provide that all payments due the state of Washington from the United States for services rendered under said contracts shall be paid to the department. [1959 c 28 § 72.23.260. Prior: 1951 c 139 § 65. Formerly RCW 71.02.460.]

72.23.280 Nonresidents—Hospitalization. Nonresidents of this state conveyed or coming herein while mentally ill shall not be hospitalized in a state hospital, but this prohibition shall not prevent the hospitalization and temporary care in said hospitals of such persons stricken with mental illness while traveling or temporarily sojourning in this state, or sailors attacked with mental illness upon the high seas and first arriving thereafter in some port within this state. [1959 c 28 § 72.23.280. Prior: 1951 c 139 § 67. Formerly RCW 71.02.470.]

72.23.290 Transfer of patients—Authority of transferee. Whenever it appears to be to the best interests of the patients concerned, the department shall have the authority to transfer such patients among the various state hospitals pursuant to rules and regulations established by said department. The superintendent of a state hospital shall also have authority to transfer patients eligible for treatment to the veterans administration or other United States government agency where such transfer is satisfactory to such agency. Such agency shall possess the same authority over such patients as the superintendent would have possessed had the patient remained in a state hospital. [1959 c 28 § 72.23.290. Prior: 1951 c 139 § 68. Formerly RCW 71.02.480.]

Commitment to veterans administration or other federal agency: RCW 73.36.165.

State hospitals—Allocation of patients: RCW 71.02.450.

72.23.300 Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty. Any person not authorized by law so to do, who brings into any state institution for the care and treatment of mental illness or within the grounds thereof, any opium, morphine, cocaine or other narcotic, or any intoxicating liquor of any kind whatever, except for medicinal or mechanical purposes, or any firearms, weapons, or explosives of any kind is guilty of a felony. [1959 c 28 § 72.23.300. Prior: 1949 c 198 § 52; Rem. Supp. 1949 § 6932–52. Formerly RCW 71.12.630.]

Narcotic drugs: Chapter 69.32 RCW.

Uniform controlled substances act: Chapter 69.50 RCW.

72.23.900 Construction—Purpose—1959 c 28. The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 28 § 72.23.900. Prior: 1951 c 139 § 1.]

72.23.910 Construction—Effect on laws relating to the criminally insane—"Insane" as used in other statutes. Nothing in this chapter shall be construed as affecting the laws of this state relating to the criminally insane or insane inmates of penal institutions. Where the term "insane" is used in other statutes of this state its meaning shall be synonymous with mental illness as defined in this chapter. [1959 c 28 § 72.23.910. Prior:

1951 c 139 § 4; 1949 c 198 § 15; Rem. Supp. 1949 § 6953-15. Formerly RCW 71.02.020.]

Chapter 72.25

NONRESIDENT MENTALLY ILL, SEXUAL PSYCHOPATHS, AND PSYCHOPATHIC DELINQUENTS

Sections	
72.25.010	Deportation of aliens—Return of residents.
72.25.020	Return of nonresidents—Reciprocity—Expense—Resident of this state defined.
72.25.030	Assistance—Payment of expenses.

72.25.010 Deportation of aliens—Return of residents. It shall be the duty of the secretary of the department of social and health services, in cooperation with the United States bureau of immigration and/or the United States department of the interior, to arrange for the deportation of all alien sexual psychopaths, psychopathic delinquents, or mentally ill persons who are now confined in, or who may hereafter be committed to, any state hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in this state; to transport such alien sexual psychopaths, psychopathic delinquents, or mentally ill persons to such point or points as may be designated by the United States bureau of immigration or by the United States department of the interior; and to give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in a territory of the United States or in a foreign country. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 49; 1965 c 78 § 1; 1959 c 28 § 72.25.010. Prior: 1957 c 29 § 1; 1953 c 232 § 1. Formerly RCW 71.04.270.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Sexual psychopaths and psychopathic delinquents: Chapter 71.06 RCW.

72.25.020 Return of nonresidents—Reciprocity—Expense—Resident of this state defined. The secretary shall also return all nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons who are now confined in or who may hereafter be committed to a state hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in this state to the states or state in which they may have a legal residence. For the purpose of facilitating the return of such persons the secretary may enter into a reciprocal agreement with any other state for the mutual exchange of sexual psychopaths, psychopathic delinquents, or mentally ill persons now confined in or hereafter committed to any hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in one state whose legal residence is in the other, and he may give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, or the

mentally ill in another state. Such residents may be returned directly to the proper Washington state institution without further court proceedings: *Provided*, That if the superintendent of such institution is of the opinion that the returned person is not a sexual psychopath, a psychopathic delinquent, or mentally ill person he may discharge said patient: *Provided further*, That if such superintendent deems such person a sexual psychopath, a psychopathic delinquent, or mentally ill person, he shall file an application for commitment within ninety days of arrival at the Washington institution.

A person shall be deemed to be a resident of this state within the meaning of this chapter who has maintained his domiciliary residence in this state for a period of one year preceding commitment to a state institution without receiving assistance from any tax supported organization and who has not subsequently acquired a domicile in another state: *Provided*, That any period of time spent by such person while an inmate of a state hospital or state institution or while on parole, escape, or leave of absence therefrom shall not be counted in determining the time of residence in this or another state.

All expenses incurred in returning sexual psychopaths, psychopathic delinquents, or mentally ill persons from this to another state may be paid by this state, but the expense of returning residents of this state shall be borne by the state making the return. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 50; 1965 c 78 § 2; 1959 c 28 § 72.25.020. Prior: 1957 c 29 § 2; 1953 c 232 § 2. Formerly RCW 71.04.280.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.25.030 Assistance—Payment of expenses. For the purpose of carrying out the provisions of this chapter the secretary may employ all help necessary in arranging for and transporting such alien and nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons, and the cost and expense of providing such assistance, and all expenses incurred in effecting the transportation of such alien and nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons, shall be paid from the funds appropriated for that purpose upon vouchers approved by the department. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 51; 1965 c 78 § 3; 1959 c 28 § 72.25.030. Prior: 1957 c 29 § 3; 1953 c 232 § 3. Formerly RCW 71.04.290.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Chapter 72.27

INTERSTATE COMPACT ON MENTAL HEALTH

Sections	
72.27.010	Compact enacted.
72.27.020	Secretary is compact administrator—Rules and regulations—Cooperation with other agencies.
72.27.030	Supplementary agreements.

72.27.040	Financial arrangements.
72.27.050	Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable.
72.27.060	Transmittal of copies of chapter.
72.27.070	Right to deport aliens and return residents of non-party states preserved.

72.27.010 Compact enacted. The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation

shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances: *Provided, however,* That in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state

and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full

force and effect as to the state affected as to all severable matters. [1965 ex.s. c 26 § 1.]

Chapter added: "The foregoing provisions of this act are added to chapter 28, Laws of 1959 and to Title 72 RCW, and shall constitute a new chapter therein." [1965 ex.s. c 26 § 8.]

Effective date—1965 ex.s. c 26: "This act shall take effect upon July 1, 1965." [1965 ex.s. c 26 § 9.]

72.27.020 Secretary is compact administrator—Rules and regulations—Cooperation with other agencies. Pursuant to said compact provided in RCW 72.27-.010, the secretary of social and health services shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this state thereunder. [1979 c 141 § 233; 1965 ex.s. c 26 § 2.]

72.27.030 Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [1965 ex.s. c 26 § 3.]

72.27.040 Financial arrangements. The compact administrator, subject to the moneys available therefor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [1965 ex.s. c 26 § 4.]

72.27.050 Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable. No person shall be transferred to another party state pursuant to this chapter unless the compact administrator first shall have obtained either:

(a) The written consent to such transfer by the proposed transferee or by others on his behalf, which consent shall be executed in accordance with the requirements of RCW 72.23.070, and if such person was originally committed involuntarily, such consent also shall be approved by the committing court; or

(b) An order of the superior court approving such transfer, which order shall be obtained from the committing court, if such person was committed involuntarily, otherwise from the superior court of the county where such person resided at the time of such commitment; and such order shall be issued only after notice

and hearing in the manner provided for the involuntary commitment of mentally ill or mentally deficient persons as the case may be.

The courts of this state shall have concurrent jurisdiction with the appropriate courts of other party states to hear and determine petitions seeking the release or return of residents of this state who have been transferred from this state under this chapter to the same extent as if such persons were hospitalized in this state; and the laws of this state relating to the release of such persons shall govern the disposition of any such proceeding. [1965 ex.s. c 26 § 5.]

72.27.060 Transmittal of copies of chapter. Duly authorized copies of this chapter shall, upon its approval be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments. [1965 ex.s. c 26 § 6.]

72.27.070 Right to deport aliens and return residents of nonparty states preserved. Nothing in this chapter shall affect the right of the secretary of social and health services to deport aliens and return residents of nonparty states as provided in chapter 72.25 RCW. [1979 c 141 § 234; 1965 ex.s. c 26 § 7.]

Chapter 72.29

MULTI-USE FACILITIES FOR THE MENTALLY OR PHYSICALLY HANDICAPPED OR THE MENTALLY ILL

Sections

72.29.010 Harrison Memorial Hospital property and facilities (Olympic Center for Mental Health and Mental Retardation).

72.29.010 Harrison Memorial Hospital property and facilities (Olympic Center for Mental Health and Mental Retardation). After the acquisition of Harrison Memorial Hospital, the department of social and health services is authorized to enter into contracts for the repair or remodeling of the hospital to the extent they are necessary and reasonable, in order to establish a multi-use facility for the mentally or physically handicapped or the mentally ill. The secretary of the department of social and health services is authorized to determine the most feasible and desirable use of the facility and to operate the facility in the manner he deems most beneficial to the mentally and physically handicapped, or the mentally ill, and is authorized, but not limited to programs for out-patient, diagnostic and referral, day care, vocational and educational services to the community which he determines are in the best interest of the state. [1977 ex.s. c 80 § 52; 1965 c 11 § 3.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Declaration of purpose: "The state facilities to provide community services to the mentally and physically deficient and the mentally ill are inadequate to meet the present demand. Great savings to the taxpayers can be achieved while helping to meet these worthwhile needs. It is therefore the purpose of this act to provide for acquisition or lease

of Harrison Memorial Hospital property and facilities and the operation thereof as a multi-use facility for the mentally and physically deficient and the mentally ill." [1965 c 11 § 1.]

Department created—Powers and duties transferred to: RCW 43.20A.030.

Chapter 72.30 INTERLAKE SCHOOL

Sections

72.30.010 Use of surplus facilities at Eastern State Hospital authorized.

72.30.020 Selection and designation of facilities—Joint use.

72.30.030 Superintendent—Appointment—Qualifications.

72.30.040 Powers and duties of superintendent.

72.30.050 Persons eligible for admission—Transfers from state residential schools and hospitals.

Educational programs for residential school residents: RCW 28A.58.770–28A.58.778.

72.30.010 Use of surplus facilities at Eastern State Hospital authorized. The secretary of the department of social and health services is authorized to utilize at the Eastern State Hospital, surplus physical facilities as an institution for handicapped persons eligible for admission or admitted to a state institution. The institution authorized by this chapter shall be known as the "Interlake School". [1977 ex.s. c 80 § 53; 1967 ex.s. c 18 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.30.020 Selection and designation of facilities—Joint use. The secretary of the department of social and health services is authorized to designate and select such buildings and facilities and tracts of land at the Eastern State Hospital, which are surplus to the needs of the department for mentally ill persons, and which are reasonably necessary and adequate for a school for handicapped persons. The secretary shall also designate those buildings, equipment and facilities which are to be used jointly and mutually by both the Eastern State Hospital and the Interlake School for handicapped persons. [1977 ex.s. c 80 § 54; 1967 ex.s. c 18 § 2.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.30.030 Superintendent—Appointment—Qualifications. The superintendent of the Interlake School for handicapped persons shall be appointed by the secretary and shall have such administrative experience and possess such qualifications as shall be determined by the state personnel board subject to the advice and approval of the secretary. [1977 ex.s. c 80 § 55; 1967 ex.s. c 18 § 3.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.30.040 Powers and duties of superintendent. The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules and regulations of the department and the state personnel board, he shall appoint all subordinate officers and employees.

(2) Subject to the rules and regulations of the department, he shall supervise and manage the school, grounds, buildings and equipment, the subordinate officers and employees, and the persons committed, admitted or transferred to such school and shall have custody of such persons until they are released, discharged or transferred as provided by law.

(3) He shall be the custodian of the personal property of all residents of the school subject to the provisions of RCW 72.33.180 as now or hereafter amended.

(4) Subject to the approval of the secretary, he shall be authorized to establish such industrial, vocational, educational or training programs as would be most beneficial to the residents of such school, except for the program of education provided pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended.

(5) Except as otherwise provided in this chapter, he shall administer the institution in accordance with the provisions of chapter 72.33 RCW. [1979 1st ex.s. c 217 § 11; 1979 c 141 § 235; 1967 ex.s. c 18 § 4.]

Effective date—Severability—1979 1st ex.s. c 217: See notes following RCW 28A.58.770.

72.30.050 Persons eligible for admission—Transfers from state residential schools and hospitals. The secretary of social and health services shall be authorized to admit to the Interlake School for mentally deficient persons, any mentally deficient person eligible for admission to any state residential school for such persons. He shall be further authorized to transfer to such institution, persons admitted to other state residential schools or persons committed to state hospitals who are in need of care, treatment and training for mental deficiency. [1979 c 141 § 236; 1967 ex.s. c 18 § 5.]

Chapter 72.33

STATE RESIDENTIAL SCHOOLS— RESIDENTIAL PLACEMENT, ETC.

Sections

72.33.010	Declaration of purpose.
72.33.020	Definitions.
72.33.030	Lakeland Village, Rainier, Yakima Valley, and Fircrest Schools established.
72.33.040	Superintendents—Qualifications—Powers and duties.
72.33.050	School educational program created and maintained for each residential and certain state schools—Scope.
72.33.070	Department of social and health services to determine capacity of residential quarters.
72.33.080	Department of social and health services to aid placement in foster homes.
72.33.090	Seal of state school—Use.
72.33.100	Superintendent as witness in judicial proceedings—Depositions—Exempt from jury service.
72.33.110	Gifts to state school—Acceptance, use, record.
72.33.125	Services or facilities as alternative to state residential schools—Application—Determination of eligibility.
72.33.130	Admission to suitable facility—Commitment by court.
72.33.140	Withdrawal of resident from school or other residential placement—Placement, discharge basis.

72.33.150	Preventing withdrawal from residential custody—Procedure.
72.33.160	Return of resident to community—Placement.
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Educational programs for residential school residents: RCW 28A.58.770–28A.58.778.

Handicapped children, parental responsibility, commitment: Chapter 26.40 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.33.010 Declaration of purpose. The purposes of this chapter are: To provide for those children and adults who are exceptional in their needs for care, treatment and education by reason of mental and/or physical deficiency, residential care designed to develop their individual capacities to their optimum; to provide for admittance, withdrawal and discharge from state residential schools upon parental application; and to insure a comprehensive program for the education, guidance, care, treatment and rehabilitation of all persons admitted to Lakeland Village and Rainier school and such other like schools as may be hereafter established. [1959 c 28 § 72.33.010. Prior: 1957 c 102 § 1; 1937 c 10 § 3; RRS § 4679–3.]

72.33.020 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Mental handicap" is a state of limited development in consequence of which the individual affected is mentally incapable of assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation.

(2) "Physical handicap" is a state of physical impairment in consequence of which the individual affected is physically incapable of assuming those responsibilities expected of the socially adequate person such as self-direction, self-support and social participation.

(3) "Parent" is the person or persons having the legal right to custody of a child by reason of kinship by birth or adoption.

(4) "State school" shall mean any residential school of the department established, operated and maintained by the state of Washington for the education, guidance, care, treatment and rehabilitation of handicapped persons as defined herein.

(5) "Resident of a state school" shall mean a person, whose handicapping condition requires the specialized care, treatment and educational instruction therein provided, and who has been admitted upon parental or guardian's or limited guardian's application, or found in need of residential care by proper court and duly received.

(6) "Court" shall mean the superior court of the state of Washington.

(7) "Department" shall mean the department of social and health services or its successor.

(8) "Resident of the state of Washington" shall mean a person who has acquired his domicile in this state by continuously residing within the state for a period of not less than one year before application for admission is made: *Provided*, That the residence of an unemancipated minor shall be imputed from the residence of the parents if they are living together, or from the residence of the parent with whom the child resides, and if the parental rights and responsibilities regarding a minor have been transferred by the court, then the residence of such minor shall be imputed from the person to whom such have been awarded.

(9) "Superintendent" shall mean the superintendent of Lakeland Village, Rainier school and other like residential schools that may be hereafter established.

(10) "Custody" shall mean immediate physical attendance, retention and supervision.

(11) "Placement" shall mean an extramural status for the resident's best interests granted after reasonable notice and consultation with the parents or guardian or limited guardian and such resident.

(12) "Discharge" shall mean the relinquishment by the state of all rights and responsibilities it may have acquired by reason of the acceptance for admission of any resident.

(13) "Residential placement" is any out-of-home placement providing domiciliary type care among other services for which the state makes payment in whole or in part including, but not limited to, state residential schools, group homes, group training homes, boarding homes and nursing homes, but does not include placement in a state juvenile or adult correctional facility without consultation as provided for in RCW 72.33.160.

(14) "Domiciliary care services" shall mean the furnishing of necessary room, board, laundry, clothing, housekeeping, and other personal care services.

(15) "Secretary" means the secretary of social and health services or his designee. [1977 ex.s. c 80 § 56; 1975 1st ex.s. c 246 § 1; 1973 1st ex.s. c 154 § 101; 1959 c 28 § 72.33.020. Prior: 1957 c 102 § 2.]

~~Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.~~

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

72.33.030 Lakeland Village, Rainier, Yakima Valley, and Fircrest Schools established. There are hereby permanently established the following state schools for the care of the persons herein provided to be served: Lakeland Village, located at Medical Lake, Spokane county, Washington, Rainier School, located at Buckley, Pierce county, Washington, Yakima Valley School, located at Selah, Yakima county, Washington and Fircrest School, located at Seattle, King county, Washington. [1959 c 31 § 1; 1959 c 28 § 72.33.030. Prior: 1957 c 102 § 3. (i) 1905 c 70 § 1; RRS § 4655. (ii) 1947 c 157 § 1; 1939 c 62 § 1; 1917 c 64 § 1; Rem. Supp. 1947 § 4656. (iii) 1905 c 70 § 2; RRS § 4658. (iv) 1947 c 157 § 2; Rem. Supp. 1947 § 4679a. (v) 1937 c 10 § 2; RRS § 4679-2.]

72.33.040 Superintendents—Qualifications—Powers and duties. The superintendent of a state school appointed after June 12, 1957 shall be a person of good character, and either a physician licensed to practice in the state of Washington or has attained a minimum of a master's degree from an accredited college or university in psychology, social science, or education, and in addition shall have had suitable experience in an administrative or professional capacity in the residential care, treatment and training of handicapped persons.

The superintendent shall have custody of all residents and control of the medical, educational, therapeutic and dietetic treatment of all persons resident in such state school, except for the program of education provided pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended, which the school district conducting the program shall have control of and joint custody of such residents in connection therewith: *Provided*, That the superintendent shall cause surgery to be performed on any resident only upon gaining the consent of a parent, guardian, or limited guardian as authorized, except, if after reasonable effort to locate the parents, guardian, or limited guardian as authorized, and the health of such resident is certified by the attending physician to be jeopardized unless such surgery is performed, the required consent shall not be necessary.

The superintendent shall have control of the internal government and economy of the state school and shall appoint and direct all subordinate officers and employees: *Provided*, That the powers and duties conferred upon the superintendent shall be subject to the rules and regulations of the department and the state personnel board.

The superintendent shall have authority to engage the residents of the state school in beneficial work programs but shall not abuse such therapy by excessive hours or for purposes of discipline or punishment. [1979 1st ex.s. c 217 § 12; 1977 ex.s. c 80 § 62; 1969 c 56 § 3; 1959 c 28 § 72.33.040. Prior: 1957 c 102 § 4. (i) 1937 c 10 § 19; RRS § 4679-19. (ii) 1937 c 10 § 7; RRS § 4679-7.]

Effective date—Severability—1979 1st ex.s. c 217: See notes following RCW 28A.58.770.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Superintendent, general provisions: RCW 72.01.060.

72.33.050 School educational program created and maintained for each residential and certain state schools—Scope. There shall be an educational program created and maintained for each residential school pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended, and for the state schools for the deaf and blind which shall provide a comprehensive program of academic, vocational, recreational and other educational services best adapted to meet the needs and capabilities of each resident therein whether such resident must always live within the protected community of the school or can be prepared and assisted to live without.

The superintendent of public instruction shall assist the state schools in all feasible ways including financial aid so that the educational programs maintained therein shall be comparable to such programs advocated by the superintendent of public instruction for children with similar aptitudes in local school districts.

Within its available resources, each state school shall, upon request from a local school district, provide such clinical, counseling and evaluating services as may assist the local district lacking such professional resources in determining the needs of its exceptional children. [1979 1st ex.s. c 217 § 13; 1959 c 28 § 72.33.050. Prior: 1957 c 102 § 5. (i) 1913 c 173 § 14; RRS § 4672. (ii) 1937 c 10 § 18; RRS § 4672-18.]

Effective date—Severability—1979 1st ex.s. c 217: See notes following RCW 28A.58.770.

Superintendent of public instruction: Chapter 28A.03 RCW.

72.33.070 Department of social and health services to determine capacity of residential quarters. The department of social and health services shall determine by the application of proper criteria the maximum number of persons to reside in the residential quarters of the state schools and the superintendent shall adhere to such standards unless written permission is granted by the department to exceed such rated capacities. [1977 ex.s. c 80 § 63; 1959 c 28 § 72.33.070. Prior: 1957 c 102 § 7.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.33.080 Department of social and health services to aid placement in foster homes. The department of social and health services shall aid the superintendents of the state schools in the placement of residents in suitable foster homes, those to be assisted and the method thereof to be defined in a mutually approved interdepartmental agreement. [1977 ex.s. c 80 § 64; 1959 c 28 § 72.33.080. Prior: 1957 c 102 § 8.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.33.090 Seal of state school—Use. The department shall provide the superintendent with an official and appropriate seal upon which shall be inscribed the statutory name of the state school and the words "State of Washington" shall appear thereon. The superintendent shall affix the seal of the state school to any notice, order, or other instrument required to be issued by him. [1959 c 28 § 72.33.090. Prior: 1957 c 102 § 9.]

72.33.100 Superintendent as witness in judicial proceedings—Depositions—Exempt from jury service. The superintendent shall not be required to attend any court as a witness in a civil or juvenile court proceeding but parties desiring his testimony may take and use his deposition; nor shall he be required to attend as a witness in any criminal case unless the court before which his testimony shall be desired shall, upon being satisfied of the materiality of his testimony, require his attendance; and he shall be exempted from jury service. [1959 c 28 § 72.33.100. Prior: 1957 c 102 § 10.]

72.33.110 Gifts to state school—Acceptance, use, record. The superintendent is authorized to receive and accept from any person, organization or estate, gifts of money or personal property on behalf of the state school under his charge, or the residents therein, and to use such gifts for the purposes specified by the donor where such use is consistent with law. In the absence of a specified purpose the superintendent shall use such money or personal property for the benefit of the state school or for the general benefit of the residents therein. The superintendent shall keep an accurate record of the amount or kind of gift, the date received, manner expended, and the name and address of the donor. Any increase resulting from such gift may be used for the same purpose as the original gift. [1959 c 28 § 72.33.110. Prior: 1957 c 102 § 11.]

72.33.125 Services or facilities as alternative to state residential schools—Application—Determination of eligibility. (1) In order to provide ongoing points of contact with the handicapped individual and his family so that they may have a place of entry for state services and return to the community as the need may appear; to provide a link between those individuals and services of the community and state operated services so that the individuals with handicapping conditions and their families may have access to the facilities best suited to them throughout the life of the individual; to offer viable alternatives to state residential school admission; and to encourage the placement of persons from state residential schools, the secretary of social and health services or his designee, pursuant to rules and regulations of the department, shall receive applications of persons for care, treatment, hospitalization, support, training, or rehabilitation provided by state programs or services for the handicapped. Written applications shall be submitted in accordance with the following requirements:

(a) In the case of a minor person, the application shall be made by his parents or by the parent, guardian, limited guardian where so authorized, person or agency legally entitled to custody, which application shall be in the form and manner required by the department; and

(b) In the case of an adult person, the application shall be made by such person, by his or her guardian, or limited guardian where so authorized, or agency legally entitled to custody, which application shall be in the form and manner required by the department.

(2) Upon receipt of the written application the secretary shall determine if the individual to receive services

has a handicapping condition as defined in RCW 72.33.020 qualifying him for services. In order to determine eligibility for services, the secretary may require a supporting affidavit of a physician or a clinical psychologist, or one of each profession, certifying that the individual is handicapped as herein defined.

(3) After determination of eligibility because of a handicapping condition, the secretary shall determine the necessary services to be provided for the individual. Individuals may be temporarily admitted, for a period not to exceed thirty days, to departmental residential facilities for observation prior to determination of needed services, where such observation is necessary to determine the extent and necessity of services to be provided. [1977 ex.s. c 80 § 57; 1975 1st ex.s. c 246 § 2.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.33.130 Admission to suitable facility—Commitment by court. In the event a minor person under the age of eighteen years shall be found under the juvenile court law to be "dependent" or "delinquent" and handicapped as herein defined, and that placement for care, custody, treatment, or education in a state school is to the minor's welfare, the secretary shall receive such minor upon commitment from the superior court pursuant to such terms and conditions as may therein be set forth for placement by the department in a facility most appropriate to his needs, subject to the provisions of RCW 72.33.070. [1977 ex.s. c 80 § 58; 1975 1st ex.s. c 246 § 3; 1959 c 28 § 72.33.130. Prior: 1957 c 102 § 13. (i) 1913 c 173 § 2; RRS § 4660. (ii) 1937 c 10 § 9; RRS § 4679-9.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.33.140 Withdrawal of resident from school or other residential placement—Placement, discharge basis. Subject to the provisions of RCW 72.33.150, as now or hereafter amended, no person under the age of eighteen years residing at a state school or in other residential placement pursuant to RCW 72.33.125 shall be retained therein for more than forty-eight hours after the parent entitled to custody or the guardian has given notice of their desire to remove such person from said state school or facility unless held pursuant to court order. Subject to the provisions of RCW 72.33.150 as now or hereafter amended, no person over eighteen years residing at a state school or in other residential placement pursuant to RCW 72.33.130 shall be retained therein for more than forty-eight hours after said person, his guardian, or his court appointed personal representative entitled to custody has given notice of desire to remove such person unless held pursuant to court order.

Such notice shall indicate to the superintendent or other person in charge the proposed plan of future residence of such person and whether placement or discharge is desired. In the event withdrawal is upon a placement basis, it shall be understood that readmission will be available to the former resident if it is found necessary to return such person to the school. In the event withdrawal is upon a discharge basis it shall be

understood that application for readmission shall be considered as if it were a first application. [1975 1st ex.s. c 246 § 4; 1959 c 28 § 72.33.140. Prior: 1957 c 102 § 14. (i) 1913 c 173 § 10; RRS § 4668. (ii) 1937 c 10 § 20; RRS § 4679-20.]

72.33.150 Preventing withdrawal from residential custody—Procedure. Whenever it is deemed not to be the best interests of a resident that he should be removed from residential custody, the secretary shall promptly file a petition in the probate department of the superior court of the county of residence of such person setting forth his reasons why continued residence is indicated.

If a petition is filed the department may continue its custody over the individual for a period not to exceed five days pending disposition of the petition or preliminary hearing as to temporary custody.

Upon due notice and hearing, the court shall resolve the matter and in the event the person is found in need of further residential care the court shall so order and shall name a fit and proper person to serve as guardian or other personal representative over the resident pursuant to state law if none has been previously named. [1975 1st ex.s. c 246 § 5; 1959 c 28 § 72.33.150. Prior: 1957 c 102 § 15. (i) 1913 c 173 § 8; RRS § 4666. (ii) 1937 c 10 § 14; RRS § 4679-14.]

72.33.160 Return of resident to community—Placement. Whenever in the judgment of the secretary, the treatment and training of any resident of a state residential school has progressed to the point that it is deemed advisable to return such resident to the community, the secretary may grant placement on such terms and conditions as he may deem advisable after reasonable notice to and consultation with the resident, and with any available parent, guardian, or other court appointed personal representative of such person.

The department of social and health services shall periodically evaluate at reasonable intervals the adjustment of the resident to the placement to determine whether the resident should be continued in the placement or returned to the institution or given a different placement. [1975 1st ex.s. c 246 § 6; 1969 ex.s. c 166 § 4; 1959 c 28 § 72.33.160. Prior: 1957 c 102 § 16.]

Effective date—1969 ex.s. c 166: July 1, 1969, see note following RCW 72.33.830.

72.33.165 Payments for nonresidential services—Authorized. The secretary of social and health services is authorized to make payments for nonresidential services which exceed the cost of caring for an average individual at home, and which are reasonably necessary for the care, treatment, maintenance, support, and training of handicapped persons, upon application pursuant to RCW 72.33.125. The department shall adopt rules and regulations determining the extent and type of care and training for which the department will pay all or a portion of the costs. [1977 ex.s. c 80 § 59; 1975 1st ex.s. c 246 § 11.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.33.170 Discharge procedure. Whenever in the judgment of the secretary a person no longer needs the services provided by the department for handicapped persons, he or she may be discharged from services after reasonable notice and consultation with the person to be discharged and any available parent, guardian, limited guardian, or other court appointed personal representative. [1977 ex.s. c 80 § 60; 1975 1st ex.s. c 246 § 7; 1959 c 28 § 72.33.170. Prior: 1957 c 102 § 17.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.33.180 Personal property of resident—Superintendent as custodian—Limitations—Judicial proceedings to recover. The superintendent of a state school shall serve as custodian without compensation of such personal property of a resident as may be located at the school, including moneys deposited with the superintendent for the benefit of such resident. As such custodian, the superintendent shall have authority to disburse moneys from the resident's fund for the following purposes and subject to the following limitations:

(1) Subject to specific instructions by a donor of money to the superintendent for the benefit of a resident, the superintendent may disburse any of the funds belonging to a resident for such personal needs of such resident as the superintendent may deem proper and necessary.

(2) The superintendent may pay to the department of social and health services for the costs of care, support, maintenance, treatment, hospitalization, medical care and rehabilitation of a resident from the resident's fund when such fund exceeds two hundred dollars, to the extent of any finding of financial responsibility served upon the superintendent after such findings shall have become final except, reduction of such funds to another amount may be made where necessary to qualify such person for eligibility in any public or private program for the care, treatment, hospitalization, support, training, or rehabilitation of such person, and to qualify such person for the payment of the liabilities from any public or private program providing benefits for the payment of all or a portion of the costs of care, treatment, hospitalization, support, training, or rehabilitation: *Provided*, That if such resident does not have a guardian, parent, spouse, or other person acting in a representative capacity, upon whom notice and findings of financial responsibility have been served then the superintendent shall not make payments to the department of social and health services as above provided, until a guardian has been appointed by the court, and the time for the appeal of findings of financial responsibility as provided in RCW 72.33.670 shall not commence to run until the appointment of such guardian and the service upon him of notice and findings of financial responsibility.

(3) When a resident is granted placement, the superintendent shall deliver to said resident, or the parent, guardian, or agency legally responsible for the resident, all or such portion of the funds of which the superintendent is custodian as above defined, or other property belonging to the resident, as the superintendent may deem

necessary to the resident's welfare, and the superintendent may during such placement deliver to the former resident such additional property or funds belonging to the resident as the superintendent may from time to time deem proper. When the conditions of placement have been fully satisfied and the resident is discharged, the superintendent shall deliver to such resident, or the parent, person, or agency legally responsible for the resident, all funds or other property belonging to the resident remaining in his possession as custodian.

(4) All funds held by the superintendent as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him: *Provided*, That all interest accruing from, or as a result of the deposit of such moneys in a single fund shall be used by the superintendent for the general welfare of all the residents of such institution: *Provided, further*, That when the personal accounts of residents exceed three hundred dollars, the interest accruing therefrom shall be credited to the personal accounts of such residents. All such expenditures shall be subject to the duty of accounting provided for in this section.

(5) The appointment of a guardian for the estate of such resident shall terminate the superintendent's authority as custodian of a resident's funds upon receipt by the superintendent of a certified copy of letters of guardianship. Upon the guardian's request, the superintendent shall immediately forward to such guardian any funds or other property of the resident remaining in the superintendent's possession together with a full and final accounting of all receipts and expenditures made therefrom.

(6) Upon receipt of a written request from the superintendent stating that a designated individual is a resident of the state school for which he has administrative responsibility and that such resident has no legally appointed guardian of his estate, any person, bank, corporation, or agency having possession of any money, bank accounts, or choses in action owned by such resident, shall, if the amount does not exceed two hundred dollars, deliver the same to the superintendent as custodian and mail written notice thereof to such resident at the state school. The receipt of the superintendent shall constitute full and complete acquittance for such payment and the person, bank, corporation, or agency making such payment shall not be liable to the resident or his legal representatives. All funds so received by the superintendent shall be duly deposited by him as custodian in the resident's fund to the personal account of such resident.

If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the same without cost to the person, bank, corporation, or agency effecting such delivery to the superintendent, and the state shall indemnify such person, bank, corporation, or agency against any judgment rendered as a result of such proceeding. [1971 ex.s. c 118 § 1; 1970 ex.s. c 75 § 2; 1967 c 141 § 10; 1959 c 61 § 1; 1959 c 28 § 72.33.180. Prior: 1957 c 102 § 18.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

72.33.190 Contracts with United States for admission to state schools. The department shall have the power in the name of the state, to enter into contracts with any duly authorized representative of the United States of America, or its territories, for the admission to state schools for the care, treatment, training or education of persons requiring the same, at the expense of the United States of America, and contracts may provide for the separate or joint maintenance, care, treatment, training or education of such persons so admitted, which contracts shall provide that all payments due the state of Washington from the United States of America for services rendered thereunder shall be paid to the department and transmitted to the state treasurer for deposit in the general fund. [1959 c 28 § 72.33.190. Prior: 1957 c 102 § 19.]

72.33.200 Department not responsible until person is resident of school or other state operated facility. The department shall not be responsible for the support, welfare or actions of any person until such person is admitted to a residential school or other state operated facility for services pursuant to RCW 72.33.125. [1975 1st ex.s. c 246 § 8; 1959 c 28 § 72.33.200. Prior: 1957 c 102 § 20.]

72.33.210 Resident to be provided with clothing—
Cost. When not otherwise provided, the state school shall provide each resident with suitable clothing, the actual cost of which shall be a charge against the parents, guardian or estate of such resident; and in the event that such parent, guardian or estate is unable or is insufficient to provide or pay for such clothing, the same shall be provided by the state. [1959 c 28 § 72.33.210. Prior: 1957 c 102 § 21. (i) 1913 c 173 § 12; RRS § 4670. (ii) 1937 c 10 § 17; RRS § 4679-17.]

72.33.220 Transfer of resident between schools and other residential placements. Whenever it appears to serve the best interests of the resident concerned, the department, after consultation as provided for in RCW 72.33.160, shall have authority to transfer such resident between state schools and other residential placements conducting or having access to the type of program contemplated by this chapter. [1975 1st ex.s. c 246 § 9; 1959 c 28 § 72.33.220. Prior: 1957 c 102 § 22.]

72.33.230 Chapter does not affect parental or other rights. This chapter shall not be construed to deprive the parent or parents of any parental rights with relation to a child residing in a state school, except as provided herein for the orderly operation of such schools, nor any rights granted a co-custodian pursuant to the provisions of chapter 26.40 RCW. [1959 c 28 § 72.33.230. Prior: 1957 c 102 § 23.]

Parental successors: RCW 72.33.500.

72.33.240 Review of secretary's decision—Court review. Any parent, guardian, limited guardian, or other court appointed personal representative feeling aggrieved

by an adverse decision pertaining to admission, placement, or discharge of his ward may apply to the secretary in writing within thirty days of notification of the decision for a review and reconsideration of the decision. An administrative hearing shall be held within ten days from the date of receipt of the written request for review. In the event of an unfavorable ruling by the secretary, such parent, guardian, limited guardian, or other court appointed personal representative may institute proceedings in the superior court of the state of Washington in the county of residence of such parent or guardian, otherwise in Thurston county, and have such decision reviewed and its correctness, reasonableness, and lawfulness decided in an appeal heard as in initial proceeding on an original application. Said parent, guardian, limited guardian, or other court appointed personal representative shall have the right to appeal from the decision of the superior court to the supreme court or the court of appeals of the state of Washington, as in civil cases. [1977 ex.s. c 80 § 61; 1975 1st ex.s. c 246 § 10; 1971 c 81 § 135; 1959 c 28 § 72.33.240. Prior: 1957 c 102 § 24.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.33.260 Escape of resident—Penalty for assisting. Any person who procures the escape of any resident of any school for mental defectives to which such resident has been lawfully committed, or who advises, connives at, aids, or assists in such escape or conceals any such escape, is guilty of a felony and shall be punished by imprisonment in a state penal institution for a term of not more than five years or by a fine of not more than five hundred dollars or by both imprisonment and fine. [1959 c 28 § 72.33.260; 1957 c 225 § 1, part; 1949 c 198 § 20; Rem. Supp. 1949 § 6953–20. Formerly RCW 71.12.620.]

72.33.500 Parental successor for resident of state school—Appointment authorized. The natural or adoptive parents, or the survivor of them, of a person who is, or may become, a resident of a state school may appoint at any time a parental successor for such person. The appointment shall be effective upon the death of the surviving parent and shall be for the period the person actually resides at or is on placement from a state school. [1959 c 126 § 1.]

*Chapter does not affect parental or other rights: RCW 72.33.230.
Handicapped children: Chapter 26.40 RCW.*

72.33.510 Parental successor for resident of state school—Who may serve. A parental successor may be an individual, whether related or not to the person who is or may become a resident of a state school; a bank with a trust department, acting through its trust department; or a church, acting through the incumbent of a position to be indicated in the instrument designating or the order appointing the parental successor.

A minor may be named or appointed as a parental successor, but he may actually serve only after reaching the age of majority. [1959 c 126 § 2.]

72.33.520 Parental successor for resident of state school—Methods of appointment. A parental successor may be designated by an acknowledged document in a form to be prescribed by the department, by the last will and testament of the person or persons having the right to make the nomination, or by formal appointment by the superior court in the county in which the petitioner, or at least one of several petitioners, reside.

Court appointment shall be by petition heard ex parte as a probate matter without notice, unless required by the court. Any designation or appointment of a parental successor may also designate or appoint one or more eligible persons or organizations to serve as successors to the first named parental successor in the event of the unwillingness, inability, incapacity, or resignation of the first parental successor. [1959 c 126 § 3.]

72.33.530 Parental successor for resident of state school—Evidence of appointment to be served upon superintendent. In the event the appointment is by court order or will, a copy of the court order, or of the will together with a copy of the order admitting the will to probate, certified by the clerk of the appropriate court, shall be furnished by an interested party to the superintendent of the state school wherein the person concerned resides or may reside. No appointment of a parental successor shall be binding on a superintendent until a properly executed copy of an authorized document or a certified copy of the will, together with a certified copy of the order admitting the will to probate, or a certified copy of the court appointment has been served upon the superintendent. [1959 c 126 § 4.]

72.33.540 Parental successor for resident of state school—Written consent. The written consent of the person or organization intended to serve as the parental successor and of each named successor thereto, if any, shall accompany the petition for court appointment. The consent or consents shall be forwarded to the superintendent or his representative with the executed copy of an authorized document, or with the certified copy of the will and of the order admitting the will to probate, if appointment is by document or will, but the consent or consents need not be forwarded in the event of a court appointment. [1959 c 126 § 5.]

72.33.550 Parental successor for resident of state school—Rights and privileges of parental successor. The parental successor, during the period he is actually serving, shall have the right to exercise an active and continuing interest in, and to be informed concerning the health, education, recreation, and general welfare of the person for whom he is named parental successor. He shall be permitted to take the person from the state school on visits, trips, or vacations the same as a parent.

The superintendent shall inform, advise, and consult with the parental successor, when actually serving, regarding the person for whom the parental successor was named, as though he were the natural parent of the person, on all matters pertaining to his health, education, recreation, general welfare, and including but not limited to matters of surgery, placement and discharge.

A parental successor shall have the rights and privileges conferred by this section although the person for whom he is named parental successor is on placement from a state school and not physically resident therein. [1959 c 126 § 6.]

72.33.560 Parental successor for resident of state school—Successor's whereabouts—Emergencies—Decisions concerning resident's welfare. During the time that a person is acting as a parental successor, he shall keep the superintendent informed of his whereabouts so that he can be contacted in case of emergency.

Any bank or church appointed to act as a parental successor shall keep the superintendent informed of the name and address of the individual who should be contacted in case of emergency.

During the period a parental successor is acting, if, after reasonable effort on the part of the superintendent, the parental successor cannot be reached, the superintendent shall be free to make decisions in all matters for the best interest of the person for whom the parental successor was named. [1959 c 126 § 7.]

72.33.570 Parental successor for resident of state school—Termination of designation or appointment. Any designation or appointment of a parental successor is subject to revocation at any time, in the first instance by the person who made the designation and in the case of appointment by will or formal appointment, by the court in which the will was probated or the formal appointment was made. A person or organization named as parental successor may renounce or resign at any time.

No revocation, renunciation, resignation, death or state of incapacity will be binding on a superintendent until he has been notified in writing thereof. [1959 c 126 § 8.]

72.33.580 Parental successor for resident of state school—Successor's responsibilities and duties limited. A parental successor shall have no financial responsibility to the state of Washington for the person for whom he is named, and he shall have no obligatory duties or responsibilities except as specifically set forth in *this act. [1959 c 126 § 9.]

*Reviser's note: "[T]his act" refers to 1959 c 126 codified as RCW 72.33.500 through 72.33.590.

72.33.590 Parental successor for resident of state school—Construction—Effect on other laws. It is specifically intended that the provisions of this act shall be available for the benefit of persons who are now resident at or on placement from a state school.

*This act shall not repeal, amend or modify any law relating to intestate succession or relating to guardians of the person or of the estate of an individual. In the event of the appointment of the guardian of the person, the rights of the guardian will supersede and abrogate the rights of the parental successor of the person for whom a guardian of the person has been appointed, for so long as the appointment of the guardian of the person is effective. [1959 c 126 § 10.]

*Reviser's note: "This act" refers to 1959 c 126 codified as RCW 72.33.500 through 72.33.590.

72.33.650 Financial responsibility for costs of care, support and treatment of residents—Declaration of purpose. The purpose of RCW 72.33.650 through 72.33.700 is to place financial responsibility for cost of care, support and treatment upon those residents of state residential schools who possess assets over and above the minimal amount required to be retained for personal use; to provide procedures for establishing such liability and the monthly rate thereof, and the process for appeal therefrom to the secretary of social and health services and the courts by any person deemed aggrieved thereby. [1979 c 141 § 237; 1967 c 141 § 1.]

Effective date—1967 c 141: "This 1967 amendatory act shall become effective July 1, 1967." [1967 c 141 § 13.] This applies to RCW 72.33.650–72.33.700 and the 1967 amendment to RCW 72.33.180.

72.33.655 Financial responsibility for costs of care, support and treatment of residents—Liability of estates of admitted persons for costs—Limitation. The estates of all mentally or physically deficient persons who have been admitted to the state residential schools listed in RCW 72.33.030 either by application of their parents or guardian or by commitment of court, or who may hereafter be admitted or committed to such institutions, shall be liable for their per capita costs of care, support and treatment: *Provided*, That the estate funds may not be reduced as a result of such liability below an amount as set forth in RCW 72.33.180. [1971 ex.s. c 118 § 2; 1967 c 141 § 2.]

72.33.660 Financial responsibility for costs of care, support and treatment of residents—Ascertainment of charges—"Average per capita cost"—Computation—Collection. The charges for care, support and treatment as provided in RCW 72.33.655 shall be based on the average monthly per capita costs of operating such residential schools for the previous calendar year taking into consideration all expenses of institutional operation, maintenance and repair, salaries and wages, equipment and supplies: *Provided*, That all expenses directly related to the cost of education, vocational training and capital construction shall be excluded from the computation of the average per capita cost. The average per capita cost shall be computed by the department of social and health services annually and adopted as a rule of the department in accordance with the provisions of chapter 42.32 RCW and of chapter 34.04 RCW. The department of social and health services shall be charged with the duty of collection of such charges which may be enforced by civil action instituted by the attorney general within or without the state. [1979 c 141 § 238; 1967 c 141 § 3.]

72.33.665 Financial responsibility for costs of care, support and treatment of residents—Investigation and determination of assets of estates of residents—Ability to pay—Exemptions. The department of social and health services shall investigate and determine the assets of the estates of each resident of a state residential school and the ability of each such estate to pay all, or

any portion of, the average monthly charge for care, support and treatment at a state residential school as determined by the procedure set forth in RCW 72.33-.660: *Provided*, That the sum as set forth in RCW 72-.33.180 shall be retained by the estate of the resident at all times for such personal needs as may arise: *Provided further*, That where any person other than a resident or the guardian of his estate deposits funds so that the depositor and a resident become joint tenants with the right of survivorship, such funds shall not be considered part of the resident's estate so long as the resident is not the sole survivor among such joint tenants. [1971 ex.s. c 118 § 3; 1967 c 141 § 4.]

72.33.670 Financial responsibility for costs of care, support and treatment of residents—Notice and finding of financial responsibility—Service—Appeal—Hearing. In all cases where a determination is made that the estate of a mentally or physically deficient person who resides at a state residential school is able to pay all or any portion of the monthly charges, a notice and finding of financial responsibility shall be personally served on the guardian of the resident's estate, or if no guardian has been appointed then to his spouse or parents or other person acting in a representative capacity and having property in his possession belonging to a resident of a state residential school and the superintendent of the state residential school. The notice shall set forth the amount the department has determined that such estate is able to pay per month, not to exceed the monthly charge as fixed in accordance with RCW 72-.33.660, and the responsibility for payment to the department of social and health services shall commence thirty days after personal service of such notice and finding of responsibility. An appeal from the determination of responsibility may be made to the secretary by the guardian of the resident's estate, or if no guardian has been appointed then by his spouse, parent or parents or other person acting in a representative capacity and having property in his possession belonging to a resident of a state residential school, within such thirty day period upon written notice of appeal being served upon the secretary by registered or certified mail. If no appeal is taken, the notice and finding of responsibility shall become final. If an appeal is taken, the execution of notice and finding of responsibility shall be stayed pending the decision of such appeal. Appeals may be heard in any county seat most convenient to the appellant. The hearing of appeals may be presided over by a hearing examiner and the proceedings shall be recorded either manually or by a mechanical device. Any such appeal shall be a "contested case" as defined in RCW 34.04-.010, and practice and procedure shall be governed by the provisions of RCW 72.33.650 through 72.33.700, the rules and regulations of the department of social and health services, and the Administrative Procedure Act, chapter 34.04 RCW. [1979 c 141 § 239; 1970 ex.s. c 75 § 1; 1967 c 141 § 5.]

72.33.680 Financial responsibility for costs of care, support and treatment of residents—Modification or

vacation of finding of financial responsibility. The secretary, upon application of the guardian of the estate of the resident, and after investigation, or upon investigation without application, may, if satisfied of the financial ability or inability of such person to make payments in accordance with the original finding of responsibility, modify or vacate such original finding of responsibility, and enter a new finding of responsibility. The secretary's determination to modify or vacate findings of responsibility shall be served and be appealable in the same manner and in accordance with the same procedure for appeals of original findings of responsibility. [1979 c 141 § 240; 1967 c 141 § 7.]

72.33.685 Financial responsibility for costs of care, support and treatment of residents—Charges payable in advance. The charges for care, support, maintenance and treatment of mentally or physically handicapped persons at state residential schools as provided by RCW 72.33.650 through 72.33.700 shall be payable in advance on the first day of each and every month to the department of social and health services. [1979 c 141 § 241; 1967 c 141 § 8.]

72.33.690 Financial responsibility for costs of care, support and treatment of residents—Reimbursement from persons liable not prohibited or prevented—Placement outside institution—Death of resident, liability of estate. The provisions of RCW 72.33.650 through 72.33.700 shall not be construed to prohibit or prevent the department of social and health services from obtaining reimbursement from any person liable under RCW 72.33.650 through 72.33.700 for payment of the full amount of the accrued per capita cost from any property acquired by gift, devise or bequest subsequent to and regardless of the initial findings of responsibility under RCW 72.33.670: *Provided*, That the estate of any resident of a state residential school shall not be liable for such reimbursement subsequent to his placement out of the state residential school: *Provided further*, That upon the death of any person while a resident in a state residential school his estate shall become liable to the same extent as the resident's liability on the date of death. [1979 c 141 § 242; 1967 c 141 § 9.]

72.33.695 Financial responsibility for costs of care, support and treatment of residents—Liabilities created apply to care, support and treatment after July 1, 1967. The liabilities created by RCW 72.33.650 through 72-.33.700 shall apply to the care, support and treatment occurring after July 1, 1967. [1967 c 141 § 11.]

72.33.700 Financial responsibility for costs of care, support and treatment of residents—Discretionary allowance of increased amount in resident's fund. Notwithstanding any other provision of RCW 72.33.650 through 72.33.700, the secretary may, in his discretion any resident of a state residential school can be discharged more rapidly therefrom and assimilated into a community, keep an amount not exceeding five thousand dollars in the resident's fund for such resident and such resident shall not thereafter be liable thereon for per capita costs

of care, support and treatment as provided for in RCW 72.33.655. [1979 c 141 § 243; 1967 c 141 § 12.]

72.33.800 Agreements to pay others for care, treatment, maintenance of developmentally disabled—Authorized—Definitions. The secretary of the department of social and health services is hereby authorized to enter into agreements with any person, or with any person, corporation or association operating a day training center or group training home or a combination thereof approved by the department, for the payment of all, or a portion of the cost of the care, treatment, maintenance, support and training of developmentally disabled persons.

For the purpose of RCW 72.33.800 through 72.33.820, as now or hereafter amended, the terms "day training center" and "group training home" shall have the following meanings:

(1) "Day training center" shall mean a facility equipped, supervised, managed and operated at least three days per week by any person, association or corporation on a nonprofit basis for the day-care, treatment, training and maintenance of developmentally disabled persons, and approved in accordance with RCW 72.33.800 through 72.33.820, as now or hereafter amended, and the standards of the department of social and health services as set forth in the rules and regulations promulgated by the secretary.

(2) "Group training home" shall mean a facility equipped, supervised, managed and operated on a full time basis by any person, association or corporation on a nonprofit basis for the full time care, treatment, training and maintenance of developmentally disabled persons, and approved in accordance with RCW 72.33.800 through 72.33.820, as now or hereafter amended, and the standards of the department of social and health services as set forth in rules and regulations promulgated by the secretary. [1977 ex.s. c 80 § 65; 1974 ex.s. c 71 § 9; 1965 c 34 § 1; 1961 c 251 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

State and local services for mentally retarded and developmentally disabled: Chapter 71.20 RCW.

72.33.805 Agreements to pay others for care, treatment, maintenance of developmentally disabled—Payments by department are supplemental to payments made by developmentally disabled persons—Limitation on amount. All payments made by the secretary of the department of social and health services pursuant to RCW 72.33.800 through 72.33.820, as now or hereafter amended, shall be, insofar as possible, supplementary to payments to be made to a day training center or group training home or combination thereof by the developmentally disabled persons resident therein. Payments made by the secretary in accordance with the authority of RCW 72.33.800 through 72.33.820, as now or hereafter amended, shall not exceed actual costs for the care, treatment, support, maintenance and training of any developmentally disabled person whether at a day training center or group training home or combination thereof or

otherwise. [1977 ex.s. c 80 § 66; 1974 ex.s. c 71 § 10; 1965 c 34 § 2; 1961 c 251 § 2.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

72.33.810 Agreements to pay others for care, treatment, maintenance of developmentally disabled—Certification of facilities. Any person, corporation, or association may make application to the secretary of the department of social and health services for approval and certification of the applicant's facility as a day training center, or a group training home for developmentally disabled persons or a combination of both. The secretary may either grant or deny certification or revoke certification previously granted after investigation of the applicant's facilities, to ascertain whether or not such facilities are adequate for the health, safety and the care, treatment, maintenance, training and support of developmentally disabled persons, in accordance with standards as set forth in rules and regulations promulgated by the secretary. [1977 ex.s. c 80 § 67; 1974 ex.s. c 71 § 11; 1961 c 251 § 3.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

72.33.815 Agreements to pay others for care, treatment, maintenance of mentally retarded or developmentally disabled—Application by parent or guardian for payments by department—Investigation—Acceptance or rejection—Limitation on amount. The parent or guardian of a retarded or developmentally disabled person may make application to the secretary of social and health services for the payment of all, or a portion of, the monthly cost of care, treatment, maintenance, support and training of such mentally retarded or developmentally disabled person, whether in a day training center or a group training home or a combination thereof or otherwise, approved by the department. The secretary, after investigation, may accept or reject the application, and, if accepted, shall determine the extent and type of care and training and the amount which the department will pay, based upon the needs of such mentally retarded or developmentally disabled person and the ability of the parent or the guardian to pay, or contribute to the payment of the monthly cost of such care and training. The secretary, may, upon application of such parent or guardian, after investigation of the ability or inability of such persons to pay, or without application being made, modify the amount of the monthly payments to be paid by the department of social and health services for the care and training of such mentally retarded or developmentally disabled persons whether at a day training center or group training home or combination thereof or otherwise. [1974 ex.s. c 71 § 12; 1965 c 34 § 3; 1961 c 251 § 4.]

Severability—1974 ex.s. c 71: See note following RCW 71.20.015.

72.33.820 Agreements to pay others for care, maintenance and training of persons acceptable for admission to residential school—Facilities to be nonsectarian. A

day training center and a group training home as used in RCW 72.33.800 through 72.33.815 shall be a nonsectarian day training center and a nonsectarian group training home. [1961 c 251 § 5.]

72.33.825 Purchase of products and services provided by group training homes and day training centers. See RCW 43.19.520–43.19.530.

72.33.830 Residents of residential schools placed in group homes—Payment of costs of care, support and training authorized. The department of social and health services is authorized to pay for all or a portion of the costs of care, support and training of residents of state residential schools for the mentally and/or physically handicapped persons who are placed in group homes, as hereinafter provided. [1979 c 141 § 244; 1969 ex.s. c 166 § 1.]

Effective date—1969 ex.s. c 166: "This act shall become effective on July 1, 1969." [1969 ex.s. c 166 § 5.] This applies to RCW 72.33.830–72.33.850, and to the 1969 amendment to RCW 72.33.160.

72.33.840 Residents of residential schools placed in group homes—Payments by department are supplemental to payments from estate or other resources of resident—Direct payments authorized. All payments made by the department of social and health services in accordance with RCW 72.33.830 shall, insofar as reasonably possible, be supplementary to payments to be made for the costs of care, support and training in a group home by the estate of such resident of the state residential school, or from any resource which such resident may have, or become entitled to, from any public, private, federal or state agency. Payments by the department of social and health services under RCW 72.33.160, and 72.33.830 through 72.33.850 may, in its discretion, be paid directly to group homes, or to counties having created community boards for mental retardation services in accordance with the provisions of chapter 110, Laws of 1967 ex. sess. [1979 c 141 § 245; 1969 ex.s. c 166 § 2.]

72.33.850 Residents of residential schools placed in group homes—Rules and regulations. The department of social and health services shall promulgate rules and regulations concerning the eligibility of residents of state schools for placement in group homes under the authority of RCW 72.33.160, and 72.33.830 through 72.33.850, determination of ability of such persons or their estates to pay all or a portion of the cost of care, support and training, the manner and method of licensing or certification and inspection and approval of such group homes for placement under RCW 72.33.160, and 72.33.830 through 72.33.850 and procedures for the payment of costs of care, maintenance and training in group homes.

Such rules and regulations shall include standards for care, maintenance and training to be met by such group homes. In addition, the department of social and health services shall be responsible for coordinating state activities and resources relating to group home placements to the end that state and local resources will be efficiently

expended and an effective community-based group home program may be created. [1979 c 141 § 246; 1969 ex.s. c 166 § 3.]

72.33.860 Death of resident, payment of funeral expenses—Limitation. The secretary of the department of social and health services or his designee may, upon the death of a resident, supplement such funds as were in the resident's account at the time of his death to provide funeral and burial expenses for such deceased resident: *Provided*, That the total of the resident's account funds plus the state supplementation which may be used for funeral and burial purposes shall not exceed six hundred fifty dollars. [1971 ex.s. c 118 § 4.]

72.33.900 Chapter to be liberally construed. The provisions of this chapter shall be liberally construed so that persons who are in need of care, treatment, training or education in a state school by reason of their exceptional mental and/or physical qualities shall receive the benefit of such residential facilities while still preserving all rights and privileges guaranteed the person by the Constitution of the United States of America and the state of Washington. [1959 c 28 § 72.33.900. Prior: 1957 c 102 § 25. Formerly RCW 72.33.250.]

Chapter 72.36

SOLDIERS' AND VETERANS' HOMES

Sections

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Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.36.010 Establishment of soldiers' home. There is established at Orting, Pierce county, an institution which shall be known as the Washington soldiers' home. [1959 c 28 § 72.36.010. Prior: 1901 c 167 § 1; 1890 p 269 § 1; RRS § 10727.]

72.36.020 Superintendents—Appointment. The director of the department of veterans affairs shall appoint

a superintendent for the state soldiers' home and colony, and a superintendent for the Washington veterans' home, who, with the consent of the director, may be styled, respectively, "commandant of the home". The superintendent shall exercise management and control of the institution in accordance with policies and/or procedures promulgated by the director of the department of veterans affairs and rules and regulations of the department. [1977 c 31 § 2; 1959 c 28 § 72.36.020. Prior: 1890 p 271 § 7; RRS § 10728.]

Superintendent, general provisions: RCW 72.01.060.

72.36.030 Who may be admitted. All honorably discharged veterans who have served the United States government in any of its wars, and members of the state militia disabled while in the line of duty, may be admitted to the state soldiers' home at Orting under such rules and regulations as may be adopted by the department: *Provided*, That such applicants have been actual bona fide residents of this state at the time of their application, and are indigent and unable to support themselves: *Provided further*, That the surviving spouses of all veterans and members of the state militia disabled while in the line of duty, who were members of a soldiers' home or colony or veterans' home in this state or entitled to admission thereto at the time of death, and surviving spouses of all such veterans and members of the state militia, who would have been entitled to admission to a soldiers' home or colony or veterans' home in this state at the time of death, but for the fact that they were not indigent and unable to earn a support for themselves and families, which spouses have since the death of their husbands or wives, become indigent and unable to earn a support for themselves shall be admitted to such home: *Provided, further*, That such spouses are not less than fifty years of age and were married and living with their husbands or wives on or before three years prior to the date of their application, and have not been married since the decease of their husbands or wives to any person not a member of a soldiers' home or colony or veterans' home in this state or entitled to admission thereto: *And provided, further*, That sufficient facilities and resources are available to accommodate such applicant. [1977 ex.s. c 186 § 1; 1975 c 13 § 1; 1959 c 28 § 72.36.030. Prior: 1915 c 106 § 1; 1911 c 124 § 1; 1905 c 152 § 1; 1901 c 167 § 2; 1890 p 270 § 2; RRS § 10729.]

Severability—1977 ex.s. c 186: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 186 § 12.] This applies to RCW 72.36.035, 72.36.045, 72.36.055, 72.36.120, and 72.36.130 and to the 1977 amendments to RCW 72.36.030, 72.36.040, 72.36.060, 72.36.070, 72.36.080, and 72.36.090.

72.36.035 Definitions. For purposes of this chapter, unless the context clearly indicates otherwise, "actual bona fide residents of this state" shall mean persons who have a domicile in the state of Washington immediately prior to application for membership in the soldiers' home or colony or veterans' home. The term "domicile" shall mean a person's true, fixed, and permanent home and

place of habitation, and shall be the place where the person intends to remain, and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere. [1977 ex.s. c 186 § 11.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.040 Colony established—Who may be admitted. There is hereby established what shall be known as the "Colony of the State Soldiers' Home." All of the following persons who reside within the limits of Orting school district and have been actual bona fide residents of this state at the time of their application and who have personal property of less than one thousand five hundred dollars and/or a monthly income insufficient to meet their needs outside of residence in such colony and soldiers' home as determined by standards of the department of veterans' affairs, may be admitted to membership in said colony under such rules and regulations as may be adopted by the department.

(1) All honorably discharged veterans who have served in the armed forces of the United States during wartime, members of the state militia disabled while in the line of duty, and their respective spouses with whom they have lived for three years prior to application for membership in said colony. Also, the spouse of any such veteran or disabled member of the state militia is eligible for membership in said colony, if such spouse is the widow or widower of a veteran who was a member of a soldiers' home or colony in this state or entitled to admission thereto at the time of death: *Provided*, That such veterans and members of the state militia shall, while they are members of said colony, be living with their said spouses.

(2) The spouses of all veterans who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death, and the spouses of all veterans who would have been entitled to admission to a soldiers' home or colony in this state at the time of death but for the fact that they were not indigent and unable to support themselves and families, which spouses have since the death of their said husbands or wives become indigent and unable to earn a support for themselves: *Provided*, That such spouses are not less than fifty years of age and have not been married since the decease of their said husbands or wives to any person not a member of a soldiers' home or colony in this state or entitled to admission thereto. Any resident of said colony may be admitted to the state soldiers' home for temporary care when requiring treatment. [1977 ex.s. c 186 § 2. Prior: 1973 1st ex.s. c 154 § 102; 1973 c 101 § 1; 1959 c 235 § 1; 1959 c 28 § 72.36.040; prior: 1947 c 190 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 2; Rem. Supp. 1947 § 10730.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.045 Soldiers' home and colony—Veterans' home—Maintenance defined. In the maintenance of the Washington soldiers' home and colony and the

Washington veterans' home by the state through the department of veterans' affairs, such maintenance shall include, but not be limited to, the provision of members' room and board, medical and dental care, physical and occupational therapy, and recreational activities, with the necessary implementing transportation, equipment, and personnel therefor. [1977 ex.s. c 186 § 10.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.050 Regulations of home applicable—Rations, medical attendance, clothing. The members of the colony established in RCW 72.36.040 as now or hereafter amended shall, to all intents and purposes, be members of the state soldiers' home and subject to all the rules and regulations thereof, except the requirements of fatigue duty, and each member shall, in accordance with rules and regulations adopted by the director, be supplied with medical attendance and supplies from the home dispensary, rations, and clothing for a member and spouse, or for a spouse admitted under RCW 72.36.040 as now or hereafter amended. The value of the supplies, rations, and clothing furnished such persons shall be determined by the director of veterans affairs and be included in the biennial budget. [1979 c 65 § 1; 1973 1st ex.s. c 154 § 103; 1967 c 112 § 1; 1959 c 28 § 72.36.050. Prior: 1947 c 190 § 2; 1939 c 161 § 1; 1927 c 276 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 3; Rem. Supp. 1947 § 10731.]

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

72.36.055 Domiciliary and nursing care to be provided. The soldiers' home and colony at Orting and the Washington veterans' home at Retsil shall provide both domiciliary and nursing care. The level of domiciliary members shall remain consistent with the facilities available to accommodate those members: *Provided*, That nothing in this section shall preclude the department from moving residents between nursing and domiciliary care in order to better utilize facilities and maintain the appropriate care for the members. [1977 ex.s. c 186 § 6.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.060 Federal funds. The state treasurer is authorized to receive any and all moneys appropriated or paid by the United States under the act of congress entitled "An Act to provide aid to state or territorial homes for disabled soldiers and sailors of the United States," approved August 27, 1888, or under any other act or acts of congress for the benefit of such homes. Such moneys shall be deposited in the general fund and shall be expended for the maintenance of the soldiers' home and veterans' home. [1977 ex.s. c 186 § 3; 1959 c 28 § 72.36.060. Prior: 1897 c 67 § 1; RRS § 10735.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.070 Washington veterans' home. There shall be established and maintained in this state a branch of the

state soldiers' home, under the name of the "Washington veterans' home," which branch shall be a home for honorably discharged veterans who have served the United States government in any of its wars, members of the state militia disabled while in the line of duty, and who are bona fide citizens of the state, and also the spouses of such veterans. [1977 ex.s. c 186 § 4; 1959 c 28 § 72.36.070. Prior: 1907 c 156 § 1; RRS § 10733.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.080 Who may be admitted to veterans' home. All of the following persons who have been actual bona fide residents of this state at the time of their application, and who are indigent and unable to earn a support for themselves and families may be admitted to the Washington veterans' home under such rules and regulations as may be adopted by the director: *Provided*, That sufficient facilities and resources are available to accommodate such person:

(1) All honorably discharged veterans of the armed forces of the United States who have served the United States in any of its wars, and members of the state militia disabled while in the line of duty, and the spouses of such veterans, and members of the state militia: *Provided*, That such spouse was married to and living with such veteran on or before three years prior to the date of application for admittance, or, if married to him or her since that date, was also a member of a soldiers' home or colony or veterans' home in this state or entitled to admission thereto.

(2) The spouses of all soldiers, sailors, and marines and members of the state militia disabled while in the line of duty, who were members of a soldiers' home or colony or veterans' home in this state or entitled to admission thereto at the time of death, and spouses of all such soldiers, sailors, and marines and members of the state militia, who would have been entitled to admission to a soldiers' home or colony or veterans' home in this state at the time of death but for the fact that they were not indigent and unable to earn a support for themselves and families, which spouses have since the death of their husbands or wives, become indigent and unable to earn a support for themselves: *Provided*, That such spouses are not less than fifty years of age and were married and living with their husbands or wives on or before three years prior to the date of their application, and have not been married since the decease of their husbands or wives to any person not a member of a soldiers' home or colony or veterans' home in this state or entitled to admission thereto. [1977 ex.s. c 186 § 5; 1975 c 13 § 2; 1973 1st ex.s. c 154 § 104; 1959 c 28 § 72.36.080. Prior: 1955 c 104 § 1; 1927 c 276 § 2; 1915 c 106 § 4; RRS § 10732.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

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

Commitment to veterans administration or other federal agency: RCW 73.36.165.

72.36.090 Hobby promotion. The superintendents of the state soldiers' home and colony and the state veterans' home are hereby authorized to:

(1) Institute programs of hobby promotion designed to improve the general welfare and mental condition of the persons under their supervision;

(2) Provide for the financing of these programs by grants from funds in the superintendent's custody through operation of canteens and exchanges at such institutions;

(3) Limit the hobbies sponsored to projects which will, in their judgment, be self-liquidating or self-sustaining. [1977 ex.s. c 186 § 9; 1959 c 28 § 72.36.090. Prior: 1949 c 114 § 1; Rem. Supp. 1949 § 10736-1.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.100 Purchase of equipment, materials for therapy, hobbies. The superintendent of each institution referred to in RCW 72.36.090 may purchase, from the appropriation to the institution, for operations, equipment or materials designed to initiate the programs authorized by RCW 72.36.090. [1959 c 28 § 72.36.100. Prior: 1949 c 114 § 2; Rem. Supp. 1949 § 10736-2.]

Division of purchasing: RCW 43.19.190.

Washington commodities to be used: Chapter 39.24 RCW.

72.36.110 Burial of deceased member or deceased spouse. The superintendent of the Washington veterans' home and the superintendent of the Washington soldiers' home and colony are hereby authorized to provide for the burial of deceased members in the cemeteries provided at the Washington veterans' home and Washington soldiers' home: *Provided*, That this section shall not be construed to prevent any relative from assuming jurisdiction of such deceased persons: *Provided further*, That the superintendent of the Washington soldiers' home and colony is hereby authorized to provide for the burial of husbands and wives of members of the colony of the Washington soldiers' home. [1959 c 120 § 1; 1959 c 28 § 72.36.110. Prior: 1955 c 247 § 7.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

72.36.120 Soldiers' home revolving fund—Income and disbursements—Expenditure and revenue control. All income of members of the soldiers' home in excess of allowable income shall be deposited in the soldiers' home revolving fund as established in section 55, chapter 269, Laws of 1975 1st ex. sess. (uncodified, and herein continued and reenacted).

(1) Allowable income shall be defined by the rules and regulations adopted by the department: *Provided*, That the allowable income of members accepted for membership shall not be decreased below one hundred sixty dollars per month during periods that such members are resident thereat.

(2) Disbursements from the soldiers' home revolving fund shall be for the benefit and welfare of all members of the soldiers' home and such disbursements shall be on the authorization of the superintendent or his authorized

representative after approval has been received from a duly constituted body representative of the members.

(3) In order to maintain an effective expenditure and revenue control, the soldiers' home revolving fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditures from such funds. [1977 ex.s. c 186 § 7.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.130 Veterans' home revolving fund—Income and disbursements—Expenditure and revenue control. All income of members of the veterans' home in excess of allowable income shall be deposited in the veterans' home revolving fund as established in section 55, chapter 269, Laws of 1975 1st ex. sess. (uncodified, and herein continued and reenacted).

(1) Allowable income shall be defined by the rules and regulations adopted by the department. However, the allowable income of members accepted for membership shall not be decreased below one hundred sixty dollars per month during periods that such members are resident thereat.

(2) Disbursements from the veterans' home revolving fund shall be for the benefit and welfare of all members of the Washington veterans' home and such disbursements shall be on the authorization of the superintendent of the home or his duly authorized representative after approval has been received from a duly constituted body representative of the members.

(3) In order to maintain an effective expenditure and revenue control, the veterans' home revolving fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditures from such funds. [1977 ex.s. c 186 § 8.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

Chapter 72.40

STATE SCHOOLS FOR BLIND, DEAF, SENSORY HANDICAPPED

Sections

72.40.010	Schools established.
72.40.020	Superintendents—Appointment—Qualifications—Discharge of employees.
72.40.031	School year—School term—Legal holidays—Use of schools.
72.40.040	Who may be admitted.
72.40.050	Admission of nonresidents.
72.40.060	Duty of school district clerks.
72.40.070	Duty of educational service district superintendents.
72.40.080	Duty of parents.
72.40.090	Expense of transportation.
72.40.100	Penalty.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Educational facilities and programs for state schools for the deaf and blind: RCW 72.05.140.

Handicapped children, parental responsibility, commitment: Chapter 26.40 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.40.010 Schools established. There are established at Vancouver, Clark county, an institution which shall be known as the state school for the blind, and a separate institution which shall be known as the state school for the deaf. [1959 c 28 § 72.40.010. Prior: 1913 c 10 § 1; 1886 p 136 § 1; RRS § 4645.]

72.40.020 Superintendents—Appointment—Qualifications—Discharge of employees. The secretary shall appoint a superintendent for each institution. The superintendents must be not less than thirty nor more than seventy years of age and must be practically acquainted with school management and class instruction of the blind and the deaf, respectively, having had at least ten years' actual experience in teaching in schools for such persons.

The secretary may discharge any employee in his discretion. [1979 c 141 § 247; 1959 c 28 § 72.40.020. Prior: 1909 c 97 p 258 § 5; RRS § 4649.]

Superintendent, general provisions: RCW 72.01.060.

72.40.031 School year—School term—Legal holidays—Use of schools. The school year for the state school for the blind and the state school for the deaf shall commence on the first day of July of each year and shall terminate on the 30th day of June of the succeeding year. The regular school term shall be for a period of nine months and shall commence as near as reasonably practical at the time of the commencement of regular terms in the public schools, with the equivalent number of days as are now required by law, and the regulations of the superintendent of public instruction as now or hereafter amended, during the school year in the public schools. The school shall observe all legal holidays, in the same manner as other agencies of state government, and the schools will not be in session on such days and such other days as may be approved by the secretary of social and health services. During the period when the schools are not in session during the regular school term, schools may be operated, subject to the approval of the secretary, for the instruction of students or for such other reasons which are in furtherance of the objects and purposes of such schools. [1979 c 141 § 248; 1970 ex.s. c 50 § 6.]

72.40.040 Who may be admitted. The schools shall be free to residents of the state between the ages of six and twenty-one years, and who are blind or deaf, or otherwise sensory handicapped, and who are free from loathsome or contagious diseases: *Provided*, That children under the age of six, who are otherwise qualified may be admitted to the school, if in the discretion of the superintendent they are proper persons to receive the training given in the school and the facilities are adequate for proper care, education, and training: *Provided further*, That students over the age of twenty-one years, who are otherwise qualified may be retained at the school, if in the discretion of the superintendent in consultation with the faculty they are proper persons to receive further training given at the school and the facilities are adequate for proper care, education, and training. [1977 ex.s. c 80 § 68; 1969 c 39 § 1; 1959 c 28

§ 72.40.040. Prior: 1955 c 260 § 1; 1909 c 97 p 258 § 3; 1903 c 140 § 1; 1897 c 118 § 229; 1886 p 136 § 2; RRS § 4647.]

~~Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.~~

72.40.050 Admission of nonresidents. The secretary may admit to the schools blind or deaf children from other states, but the parents or guardians of such children will be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children. [1979 c 141 § 249; 1959 c 28 § 72.40.050. Prior: 1909 c 97 p 258 § 4; 1897 c 118 § 251; 1886 p 141 § 32; RRS § 4648.]

72.40.060 Duty of school district clerks. It shall be the duty of the clerks of all school districts in the state, at the time for making the annual reports, to report to the superintendent of their respective educational service districts the names of all deaf, mute, or blind youth residing within their respective school districts who are between the ages of six and twenty-one years. [1975 1st ex.s. c 275 § 151; 1969 ex.s. c 176 § 97; 1959 c 28 § 72.40.060. Prior: 1909 c 97 p 258 § 6; 1897 c 118 § 252; 1890 p 497 § 1; RRS § 4650.]

~~Effective date—1969 ex.s. c 176: The effective date of this section, RCW 72.40.070, 72.40.080 and 72.40.100 was April 25, 1969.~~

~~Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.21.010.~~

~~Superintendent's duties: RCW 28A.58.150.~~

72.40.070 Duty of educational service district superintendents. It shall be the duty of each educational service district superintendent to make a full and specific report of such deaf, mute, or blind youth to the board of county commissioners of the county in which the youth resides at its regular meeting in July of each year. He shall also, at the same time, transmit a duplicate copy of such report to the secretary and the superintendent of the school for the blind or the school for the deaf, as the case may be. [1979 c 141 § 250; 1975 1st ex.s. c 275 § 152; 1969 ex.s. c 176 § 98; 1959 c 28 § 72.40.070. Prior: 1909 c 97 p 259 § 7; 1897 c 118 § 253; 1890 p 497 § 2; RRS § 4651.]

~~Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.~~

~~Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.21.010.~~

~~Educational service districts—Superintendents—Boards: Chapter 28A.21 RCW.~~

72.40.080 Duty of parents. It shall be the duty of the parents or the guardians of all such blind or deaf youth to send them each year to the proper institution. The educational service district superintendent shall take all action necessary to enforce this section. If satisfactory evidence is laid before the educational service district superintendent that any blind or deaf youth is being properly educated at home or in some suitable institution other than the state schools, he shall take no action in such case other than to make a record of such fact, and take such steps as may be necessary to satisfy himself that such defective youth will continue to receive a

proper education. [1975 1st ex.s. c 275 § 153; 1969 ex.s. c 176 § 99; 1959 c 28 § 72.40.080. Prior: 1909 c 97 p 259 § 8; 1897 c 118 § 254; 1890 p 498 § 3; RRS § 4652.]

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—**Severability**—1969 ex.s. c 176: See notes following RCW 28A.21.010.

Handicapped children, parental responsibility, commitment: Chapter 26.40 RCW.

72.40.090 Expense of transportation. If it appears to the satisfaction of the board of county commissioners that the parents of any such blind or deaf youth within their county are unable to bear the expense of transportation to and from the state schools, it shall send them to and return them from the schools or maintain them there during vacation at the expense of the county. Nothing in this section shall be construed as prohibiting the department from authorizing or incurring such travel expenses for the purpose of transporting such blind or deaf youth to and from points within this state during weekends and/or vacation periods. For the purposes of this section, the department shall impose no conditions upon parents or guardians specifying the number of weekends such persons shall take custody of deaf and blind students. [1975 c 51 § 1; 1959 c 28 § 72.40.090. Prior: 1909 c 97 p 259 § 9; 1899 c 142 § 28; 1899 c 81 § 2; 1897 c 118 § 255; RRS § 4653.]

72.40.100 Penalty. Any parent, guardian, educational service district superintendent or county commissioner who, without proper cause, fails to carry into effect the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any justice of the peace or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars. [1975 1st ex.s. c 275 § 154; 1969 ex.s. c 176 § 100; 1959 c 28 § 72.40.100. Prior: 1909 c 97 p 259 § 10; 1897 c 118 § 256; 1890 p 498 § 5; RRS § 4654.]

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—**Severability**—1969 ex.s. c 176: See notes following RCW 28A.21.010.

Chapter 72.41

BOARD OF TRUSTEES—SCHOOL FOR THE BLIND

Sections	
72.41.010	Intention—Purpose.
72.41.020	Board of trustees—Created—Membership—Terms—Vacancies—Officers—Rules and regulations.
72.41.030	Bylaws—Rules and regulations—Officers.
72.41.040	Powers and duties.
72.41.050	Eligibility and certification of teachers—Rules and regulations.
72.41.060	Travel expenses.
72.41.070	Meetings.
72.41.080	Local advisory committees.

72.41.010 Intention—Purpose. It is the intention of the legislature in creating a board of trustees for the state school for the blind to perform the duties set forth in this chapter, that the board of trustees perform needed advisory services to the legislature and directly to the secretary of the department of social and health services, hereinafter denominated the "secretary", in the development of programs for the blind, and in the operation of the Washington state school for the blind. [1973 c 118 § 1.]

72.41.020 Board of trustees—Created—Membership—Terms—Vacancies—Officers—Rules and regulations. There is hereby created a board of trustees for the state school for the blind to be composed of eleven trustees. In making such appointments the governor shall give consideration to geographical exigencies and shall appoint one trustee residing in each of the state's congressional districts. A representative of the parent-teachers association of the Washington state school for the blind, a representative of the Washington council of the blind, a representative of the Washington state association for the blind and one representative designated by the teacher association, Washington state school for the blind shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

The initial appointees of the governor to the board of trustees shall draw lots at the first meeting thereof to determine their respective initial terms. One trustee shall serve for one year, one for two years, two for three years, one for four years, and two for five years.

Thereafter the successors of the trustees initially appointed shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's seven congressional districts. No voting trustee may be an employee of the state school for the blind, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, or an elected officer or member of the legislative authority or any municipal corporation.

The board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. Four voting members of the board shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The superintendent of the state school for the blind shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board. [1973 c 118 § 2.]

72.41.030 Bylaws—Rules and regulations—Officers. Within thirty days of their appointment or July 1,

1973, whichever is sooner, the board of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified. [1973 c 118 § 3.]

72.41.040 Powers and duties. Under the general auspices of the secretary of the department of social and health services, the board of trustees of the state school for the blind:

(1) Shall monitor and inspect all existing facilities of the state school for the blind, and report its findings to the secretary;

(2) Shall study and recommend comprehensive programs of education and training and review the admission policy as set forth in RCW 72.40.040 and 72.40.050, and make appropriate recommendations to the secretary;

(3) Shall advise the secretary in selection of qualified candidates for superintendent, members of the faculty and such other administrative officers and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law. All employees and personnel classified under chapter 41.06 RCW shall continue, after June 7, 1973, to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law;

(4) May recommend to the secretary the establishment of new facilities as needs demand;

(5) May recommend to the secretary rules and regulations for the government, management, and operation of such housing facilities deemed necessary or advisable;

(6) May make recommendations to the secretary concerning classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for the school for the blind;

(7) May make recommendations to the secretary for adoption of rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the school for the blind;

(8) Shall recommend to the secretary, with the assistance of the faculty, the course of study including vocational training in the school for the blind, in accordance with other applicable provisions of law and rules and regulations;

(9) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate;

(10) Shall participate in the development of, and monitor the enforcement of the rules and regulations pertaining to the school for the blind;

(11) Shall perform any other duties and responsibilities prescribed by the secretary. [1973 c 118 § 4.]

72.41.050 Eligibility and certification of teachers—Rules and regulations. The board of trustees shall recommend rules and regulations determining eligibility for and certification of teachers in the state school for the blind, including certification for emergency or temporary, substitute or provisional duty. [1973 c 118 § 5.]

72.41.060 Travel expenses. Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the blind. [1975-'76 2nd ex.s. c 34 § 167; 1973 c 118 § 6.]

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

72.41.070 Meetings. The board of trustees shall meet at least six times each year. [1973 c 118 § 7.]

72.41.080 Local advisory committees. The board of trustees shall appoint a local advisory committee consisting of five or more persons from the local community and surrounding areas to advise the board on any matter relating to the development of vocational programs for the blind or relating to the operation of the state school for the blind. [1973 c 118 § 8.]

Chapter 72.42

BOARD OF TRUSTEES—SCHOOL FOR THE DEAF

Sections

72.42.010

Intention—Purpose.

72.42.020

Board of trustees—Created—Membership—Terms—Vacancies—Officers—Rules and regulations.

72.42.030

Bylaws—Rules and regulations—Officers.

72.42.040

Powers and duties.

72.42.050

Eligibility and certification of teachers—Rules and regulations.

72.42.060

Travel expenses.

72.42.070

Meetings.

72.42.080

Local advisory committees.

72.42.010 Intention—Purpose. It is the intention of the legislature, in creating a board of trustees for the state school for the deaf to perform the duties set forth in this chapter, that the board of trustees perform needed services to the secretary of the department of social and health services, hereinafter denominated the "secretary", in the development of programs for the deaf, and in the operation of the Washington state school for the deaf. [1972 ex.s. c 96 § 1.]

72.42.020 Board of trustees—Created—Membership—Terms—Vacancies—Officers—Rules and regulations. There is hereby created a board of trustees for the state school for the deaf to be composed of ten trustees, of whom seven shall be appointed by the governor. In making such appointments the governor shall give consideration to geographical exigencies and shall appoint one trustee residing in each of the state's

congressional districts. The president of the parent-teachers house organization of the deaf school, the vice president of the parent-teachers house organization of the deaf school, and the president of the Washington state association for the deaf shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

The initial appointees to the board of trustees shall draw lots at the first meeting thereof to determine their respective initial terms. One trustee shall serve for one year, one for two years, two for three years, one for four years, and two for five years.

Thereafter the successors of the trustees initially appointed shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's seven congressional districts. No trustee may be an employee of the state school for the deaf, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, or an elected officer or member of the legislative authority of any municipal corporation.

The board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. Four members of the board shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The superintendent of the state school for the deaf shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board. [1972 ex.s. c 96 § 2.]

72.42.030 Bylaws—Rules and regulations—Officers. Within thirty days of their appointment or July 1, 1972, whichever is sooner, the board of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified. [1972 ex.s. c 96 § 3.]

72.42.040 Powers and duties. Subject to the direction and control of the secretary of the department of social and health services, the board of trustees of the state school for the deaf:

(1) Shall monitor and inspect all existing facilities of the state school for the deaf, and report its findings to the secretary;

(2) Shall study and recommend comprehensive programs of education and training and review the admission policy as set forth in RCW 72.40.040 and

72.40.050, and make appropriate recommendations to the secretary;

(3) Shall advise the secretary in selection of qualified candidates for superintendent, members of the faculty and such other administrative officers and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law. All employees and personnel classified under chapter 41.06 RCW shall continue, after May 23, 1972, to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law;

(4) May recommend to the secretary the establishment of new facilities as needs demand;

(5) May recommend to the secretary rules and regulations for the government, management, and operation of such housing facilities deemed necessary or advisable;

(6) May make recommendations to the secretary concerning classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for the school for the deaf;

(7) May make recommendations to the secretary for adoption of rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the school for the deaf;

(8) Shall recommend to the secretary, with the assistance of the faculty, the course of study including vocational training in the school for the deaf, in accordance with other applicable provisions of law and rules and regulations;

(9) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate.

(10) Shall participate in the development of, and monitor the enforcement of the rules and regulations pertaining to the school for the deaf;

(11) Shall perform any other duties and responsibilities prescribed by the secretary. [1972 ex.s. c 96 § 4.]

72.42.050 Eligibility and certification of teachers—Rules and regulations. The board of trustees shall recommend rules and regulations determining eligibility for and certification of teachers in the state school for the deaf, including certification for emergency or temporary, substitute or provisional duty. [1972 ex.s. c 96 § 5.]

72.42.060 Travel expenses. Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the deaf. [1975-'76 2nd ex.s. c 34 § 168; 1972 ex.s. c 96 § 6.]

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

72.42.070 Meetings. The board of trustees shall meet at least six times each year. [1972 ex.s. c 96 § 7.]

72.42.080 Local advisory committees. The board of trustees shall appoint a local advisory committee consisting of five or more persons from the local community and surrounding areas to advise the board on any matter relating to the development of programs for the deaf or relating to the operation of the state school for the deaf. [1972 ex.s. c 96 § 8.]

Chapter 72.49

NARCOTIC OR DANGEROUS DRUGS— TREATMENT PROGRAMS

Sections

72.49.010	Purpose.
72.49.020	Treatment and rehabilitation programs authorized—Rules and regulations.

72.49.010 Purpose. The purpose of this chapter is to provide additional programs for the treatment and rehabilitation of persons suffering from narcotic and dangerous drug abuse. [1969 ex.s. c 123 § 1.]

Effective date—1969 ex.s. c 123: "The effective date of this act shall be July 1, 1969." [1969 ex.s. c 123 § 3.] This applies to RCW 72.49.010 and 72.49.020.

72.49.020 Treatment and rehabilitation programs authorized—Rules and regulations. There may be established at an institution, or portion thereof, to be designated by the secretary of the department of social and health services, programs for treatment and rehabilitation of persons in need of medical care and treatment due to narcotic abuse or dangerous drug abuse. Such programs may include facilities for both residential and outpatient treatment. The secretary of the department of social and health services shall promulgate rules and regulations governing the voluntary admission, treatment, and release of such patients, and all other matters incident to the proper administration of this section. [1975-'76 2nd ex.s. c 103 § 2; 1969 ex.s. c 123 § 2.]

Chapter 72.50

STATE BUREAU OF CRIMINAL IDENTIFICATION

Sections

72.50.040	Submission to taking of identifying data.
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72.50.040 Submission to taking of identifying data. All persons arrested for any of the crimes described in RCW 72.50.060, except children under the age of eighteen years, who shall be treated under RCW 13.04.130, shall submit to the taking of their fingerprints, photographs, physical description and other identifying data. [1970 ex.s. c 49 § 6; 1959 c 28 § 72.50.040. Prior: 1955 c 318 § 4. Formerly RCW 43.29.040.]

Severability—1970 ex.s. c 49: See note following RCW 9.69.100.

72.50.040 Submission to taking of identifying data. [1959 c 28 § 72.50.040. Prior: 1955 c 318 § 4. Formerly RCW 43.29.040.] Repealed by 1970 ex.s. c 18 § 62.

Reviser's note: The amendment of this section by 1970 ex.s. c 49 does not take cognizance of the section's repeal by 1970 ex.s. c 18 § 62.

Fingerprinting or photographing juvenile: RCW 13.04.130.

Chapter 72.56

STATE INSTITUTIONS FOR CHILDREN AND YOUTH

Sections

72.56.010	Institution at Fort Worden established.
72.56.040	Transfer of children and youth from other facilities to Fort Worden.
72.56.050	Superintendent, officers, employees—Appointment.

72.56.010 Institution at Fort Worden established. There is hereby established under the supervision and control of the department of social and health services an institution for the care and custody of children and youth, to be located at Fort Worden, near Port Townsend, in Jefferson county. [1979 c 141 § 251; 1959 c 28 § 72.56.010. Prior: 1957 c 217 § 1.]

Reviser's note: In addition to the amendment to this section by 1979, chapter 141, section 251, section 384 of that act directed that RCW 72.56.010 be decodified.

72.56.040 Transfer of children and youth from other facilities to Fort Worden. The secretary shall have authority to transfer children and youth to Fort Worden who are now confined at, or who may hereafter be committed to, any other facility under the supervision of the department for the custody of children and youth. [1979 c 141 § 252; 1959 c 28 § 72.56.040. Prior: 1957 c 217 § 4.]

72.56.050 Superintendent, officers, employees—Appointment. The secretary is hereby authorized to appoint a superintendent and such other officers and employees as are deemed necessary for the proper operation of the institutions and facilities authorized by this chapter. [1979 c 141 § 253; 1959 c 28 § 72.56.050. Prior: 1957 c 217 § 5.]

Superintendent, general provisions: RCW 72.01.060.

Chapter 72.60

INSTITUTIONAL INDUSTRIES COMMISSION

Sections

72.60.010	Definitions.
72.60.020	Declaration of purpose.
72.60.030	Commission created.
72.60.040	Terms, vacancies, chairman.
72.60.050	Meetings—Quorum.
72.60.060	Compensation—Travel expenses.
72.60.070	Powers and duties.
72.60.080	Hearing to establish certain industrial enterprises—Prior industrial enterprises.
72.60.090	Compensation for inmates.
72.60.100	Civil rights of inmates not restored—Other laws inapplicable.
72.60.102	Industrial insurance—Application to certain inmates—Payment of premiums and assessments.
72.60.110	Employment of inmates according to needs of state.
72.60.120	Kind, quality, quantity of goods and services.
72.60.130	Goods for public use—Exception.
72.60.140	Markings on containers.
72.60.150	Prices of goods.
72.60.160	State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions.
72.60.170	Unlawful sales—Penalty.

- 72.60.180 Use of profits.
- 72.60.190 Supervisor of purchasing may contract for and shall give preference to goods produced by authorized industries.
- 72.60.200 Exceptions from operation of chapter—Board—Variance from adopted standards.
- 72.60.210 Vouchers not to be questioned for violation of chapter—Violation is malfeasance in office.
- 72.60.220 List of goods to be supplied to all departments, institutions, agencies.
- 72.60.230 Declaration of police power—Construction of chapter.
- 72.60.240 Institutional industries revolving fund—Established—Composition—RCW 43.01.050 not applicable.
- 72.60.250 Institutional industries revolving fund—Custodian—Deposits—Depositories—Petty cash.
- 72.60.260 Institutional industries revolving fund—Expenses payable from fund.
- 72.60.270 Institutional industries revolving fund—Excess moneys.
- 72.60.280 Reports to governor, legislature—Institutional industries plan.

72.60.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Institution" means any place under the jurisdiction of the department of social and health services at which individuals are confined pursuant to court order.

(2) "Commission" means the institutional industries commission as herein created.

(3) "Enterprise" means an agricultural or manufacturing operation or group of closely related operations within a single institution which in accepted trade practices would ordinarily be carried on as a single unit for the purpose of producing saleable items above and beyond the needs of the producing institution, not to include or apply to self-sustaining activities, maintenance and construction work and handiwork of prisoners. [1979 c 141 § 254; 1959 c 28 § 72.60.010. Prior: 1955 c 314 § 2. Formerly RCW 43.95.010.]

72.60.020 Declaration of purpose. The purpose of this chapter is to aid and assist the department of social and health services in minimizing or eliminating idleness among the inmates of the state penal, correctional, or reformatory institutions and promoting rehabilitation by affording such inmates an opportunity to participate in industrial and agricultural activities and to provide for the disposition and sale of the articles produced. [1979 c 141 § 255; 1959 c 28 § 72.60.020. Prior: 1957 c 30 § 1. Formerly RCW 43.95.015.]

Convict labor: State Constitution Art. 2 § 29.

Convict-made goods: Chapter 19.20 RCW.

Labor and employment of prisoners: Chapter 72.64 RCW.

Labor prescribed by board of prison terms and paroles: RCW 99.090.

72.60.030 Commission created. There is hereby created the institutional industries commission which shall consist of the secretary of the department and six members appointed by the governor of whom two shall be representatives of organized labor, two shall be representatives of industry, one shall be a representative of agriculture and one shall be a representative of the general public. [1979 c 141 § 256; 1959 c 28 § 72.60.030. Prior: 1955 c 314 § 3. Formerly RCW 43.95.020.]

72.60.040 Terms, vacancies, chairman. The first term of the members representing industry and labor shall be two years. The first term of the members representing agriculture and the general public shall be four years. After the first term all appointments shall have a term of four years. The first term of each member shall commence on the first day of June, 1955. No members shall be removed except by the appointing authority and for cause. In the event of a vacancy in the office of any member the balance of the term shall be filled by the appointing authority as in the case of original appointments. The secretary shall act as chairman of the commission. [1979 c 141 § 257; 1959 c 28 § 72.60.040. Prior: 1955 c 314 § 4. Formerly RCW 43.95.030.]

72.60.050 Meetings—Quorum. The commission shall meet regularly at least four times during each fiscal year and may hold extra meetings on call of the chairman. Four members of the commission shall constitute a quorum and a vote of the majority of the members in office is necessary for the transaction of the business of the commission. [1959 c 28 § 72.60.050. Prior: 1955 c 314 § 5. Formerly RCW 43.95.040.]

72.60.060 Compensation—Travel expenses. The members of the commission, other than the chairman, shall receive twenty-five dollars for each day they are engaged in the official business of the commission, including time spent in traveling, for not more than twenty days in each fiscal year. All members, including the chairman, shall receive their travel expenses incurred in attending meetings of the commission and in making investigations either as a commission or individually as members of the commission at the request of the chairman in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The compensation and travel expenses of the members shall be paid from funds available for industrial operations at the institutions and shall be prorated among such funds on the basis of time spent where the efforts of the members are of application to more than one institution. [1975-'76 2nd ex.s. c 34 § 169; 1959 c 28 § 72.60.060. Prior: 1955 c 314 § 6. Formerly RCW 43.95.050.]

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

72.60.070 Powers and duties. The commission shall:

(1) Recommend productive, industrial and agricultural enterprises in the institutions under the jurisdiction of the department in such volume and of such kinds as to eliminate unnecessary idleness among the inmates and to provide diversified work activities which will serve as means of vocational education as well as of occupation and financial support.

(2) Determine the advisability and suitability of establishing, expanding, diminishing, or discontinuing each separate industrial or agricultural enterprise at each institution involving a gross annual production of more than twenty-five thousand dollars value but less than two hundred seventy-five thousand dollars value and authorize or prohibit such action. The commission shall determine the gross annual production, within the limit

set above, of each new enterprise at the time of its establishment. The annual production so set shall not be increased until a public hearing concerning the proposed increase has been held before the commission. It shall be the duty of the commission, annually, to adjust the maximum gross annual production value of two hundred seventy-five thousand dollars permitted for each separate enterprise at each institution, the purpose of such adjustment being to keep said limit in balance with changes in population of state institutions and changes in cost of production. Such adjustment shall be made in the following manner:

(a) The maximum limitation of two hundred seventy-five thousand dollars shall serve as a base figure as of December 31, 1954, for such computation.

(b) The maximum limitation for each enterprise at each institution shall be increased or decreased in the same proportion as the population of state institutions shall have increased or decreased in comparison with their population on December 31, 1954.

(c) The maximum limitation for each enterprise at each institution shall be further increased or decreased in the same proportion as the wholesale price index of the United States bureau of labor statistics shall have increased or decreased in comparison with such wholesale price index as of December 31, 1954.

The maximum gross annual limitation on production as adjusted in accordance with the above formula shall replace and serve in lieu of the two hundred seventy-five thousand dollars limitation until the next annual adjustment is made by the commission. It shall apply to enterprises previously authorized as well as to those authorized during the current period, and such adjustment may be made without public hearing.

(3) Hold hearings and make rules for the conducting of such hearings. The commission may in its discretion hold public hearings on any subject within its jurisdiction. [1959 c 28 § 72.60.070. Prior: 1955 c 314 § 7. Formerly RCW 43.95.060.]

72.60.080 Hearing to establish certain industrial enterprises—Prior industrial enterprises. No industrial enterprise which involves a gross annual production of more than twenty-five thousand dollars shall be established unless and until a hearing concerning the enterprise has been had before the commission. Public notice of the hearing shall be given prior to the hearing. At the time this commission becomes established by law, it shall at the earliest possible time convene and make necessary arrangements to place industrial enterprises that were in operation prior to this law under compliance with this law. [1959 c 28 § 72.60.080. Prior: 1955 c 314 § 8. Formerly RCW 43.95.070.]

72.60.090 Compensation for inmates. Each inmate, who is engaged in productive work in any state prison or institution under the jurisdiction of the department as a part of the work program, may receive for his work such compensation as the secretary shall determine. Such compensation shall be in accordance with a graduated schedule based on quantity and quality of work performed and skill required for its performance, and be

limited to such amounts as are set up by the secretary and approved by the commission. Said compensation shall be credited to the account of the inmate.

When any inmate violates the rules of the institution or escapes, the secretary shall determine what portion of his earnings shall be forfeited and such forfeiture shall be deposited in the industrial operations revolving fund of such institution.

Said compensation shall be paid from the industrial operations revolving fund of the institution. Whenever by any statute a price is required to be fixed for any article, material, supply, or services to be produced, manufactured, supplied, or performed in connection with the work program of the department, the compensation paid to inmates shall be included as an item of cost in fixing the final statutory price.

Inmates not engaged on work programs under the jurisdiction of the commission and financed out of the industrial operations revolving fund, but who are engaged in productive labor outside of such programs may be compensated in like manner. The compensation of such inmates shall be paid either out of funds appropriated by the legislature for that purpose or out of the industrial operations revolving fund of the institution, as the secretary of the department may direct. [1979 c 141 § 258; 1959 c 28 § 72.60.090. Prior: 1955 c 314 § 9. Formerly RCW 43.95.080.]

72.60.100 Civil rights of inmates not restored—Other laws inapplicable. Nothing in this chapter is intended to restore, in whole or in part, the civil rights of any inmate. No inmate compensated under this chapter shall be considered as an employee or to be employed by the state or the department, nor shall any such inmate, except those provided for in RCW 72.60.102 and 72.64.065, come within any of the provisions of the workmen's compensation act, or be entitled to any benefits thereunder whether on behalf of himself or of any other person. All moneys paid to inmates shall be considered a gratuity. [1972 ex.s. c 40 § 1; 1959 c 28 § 72.60.100. Prior: 1955 c 314 § 10. Formerly RCW 43.95.090.]

Effective date—1972 ex.s. c 40: "This act shall be effective July 1, 1973." [1972 ex.s. c 40 § 4.] This applies to the 1972 ex.s. amendment to this section and to RCW 72.60.102 and 72.64.065.

Restoration of civil rights: Chapter 9.96 RCW.

72.60.102 Industrial insurance—Application to certain inmates—Payment of premiums and assessments. From and after July 1, 1973, any inmate employed in an industrial enterprise pursuant to the provisions of chapter 72.60 RCW, or in a department of natural resources adult honor camp, a labor camp, or a regional jail camp established under RCW 72.64.050, 72.64.060, or 72.64.100, respectively, shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court

of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter enacted.

Any and all premiums or assessments as may arise hereunder pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid from the institutional industries revolving fund. [1979 1st ex.s. c 160 § 3; 1972 ex.s. c 40 § 2.]

72.60.110 Employment of inmates according to needs of state. The department is hereby authorized and empowered to cause the inmates in the state institutions of this state to be employed in the rendering of such services and in the production and manufacture of such articles, materials, and supplies as are now, or may hereafter be, needed by the state, or any political subdivision thereof, or that may be needed by any public institution of the state or of any political subdivision thereof. [1959 c 28 § 72.60.110. Prior: 1955 c 314 § 11. Formerly RCW 43.95.100.]

72.60.120 Kind, quality, quantity of goods and services. The commission shall, from time to time, determine the kind, quality, and quantity, of the several articles, materials, and supplies to be thus produced and manufactured or the services to be rendered. [1959 c 28 § 72.60.120. Prior: 1955 c 314 § 12. Formerly RCW 43.95.110.]

72.60.130 Goods for public use—Exception. All articles, materials, and supplies, produced or manufactured under the provisions of this chapter shall be solely and exclusively for public use and no article, material, or supplies, produced or manufactured under the provisions of this chapter shall ever be sold, supplied, furnished, exchanged, or given away, for any private use or profit whatever: *Provided*, That to avoid waste or spoilage and consequent loss to the state, byproducts and surpluses of agricultural and animal husbandry enterprises may be sold to private persons, at private sale, under rules prescribed by the secretary: *Provided, further*, That the term "public use" as used in this section is deemed to include any private nonprofit corporation which receives, or, if newly formed, reasonably expects to receive, more than fifty percent of its income from federal, state, or local governments. [1979 1st ex.s. c 160 § 2; 1979 c 141 § 259; 1959 c 28 § 72.60.130. Prior: 1955 c 314 § 13. Formerly RCW 43.95.120.]

72.60.140 Markings on containers. Each and every article manufactured under the provisions of this chapter shall have plainly marked or stamped on the outside of the shipping container thereof, the words "Washington Institutional Industries." [1959 c 28 § 72.60.140. Prior: 1955 c 314 § 14. Formerly RCW 43.95.130.]

72.60.150 Prices of goods. The commission shall from time to time examine and approve the price at which such articles, materials, and supplies are sold, which price shall be as near the prevailing market price

as possible. [1959 c 28 § 72.60.150. Prior: 1955 c 314 § 15. Formerly RCW 43.95.140.]

72.60.160 State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions. All articles, materials, and supplies herein authorized to be produced or manufactured may be purchased from the institution producing or manufacturing the same by any state agency or political subdivision of the state and at the prices fixed in the manner herein provided, and the secretary shall require those institutions under his direction to give preference to the purchasing of their needs of such articles as are produced under this chapter. [1979 c 141 § 260; 1959 c 28 § 72.60.160. Prior: 1955 c 314 § 16. Formerly RCW 43.95.150.]

72.60.170 Unlawful sales—Penalty. It shall be unlawful for any person to sell, expose for sale, or offer for sale within this state, any article or articles manufactured wholly or in part by inmate labor, except articles the sale of which is specifically sanctioned by law.

Every person selling, exposing for sale, or offering for sale any article manufactured in this state wholly or in part by inmate labor, the sale of which is not specifically sanctioned by law, is guilty of a misdemeanor. [1959 c 28 § 72.60.170. Prior: 1955 c 314 § 17. Formerly RCW 43.95.160.]

72.60.180 Use of profits. If and when the industries or enterprises covered by this chapter develop to a point where they accrue profits, profits shall be utilized as follows:

- (1) Maintenance of facilities or equipment used in existing industries.
- (2) Establishment and maintenance of new industries.
- (3) To provide vocational training for employees of the industries and other inmates.
- (4) To hold in a reserve all additional profits for the purpose of creating a fund to establish forest camps and treatment facilities. [1959 c 28 § 72.60.180. Prior: 1955 c 314 § 18. Formerly RCW 43.95.170.]

72.60.190 Supervisor of purchasing may contract for and shall give preference to goods produced by authorized industries. The supervisor of purchasing for the state of Washington is authorized to enter into contracts for production of goods and supply of services and shall give preference in the purchase of materials and supplies for the institutions, departments and agencies of the state, to those produced by industries authorized and approved by the institutional industries commission. [1979 1st ex.s. c 160 § 4; 1959 c 28 § 72.60.190. Prior: 1957 c 30 § 2. Formerly RCW 43.95.180.]

72.60.200 Exceptions from operation of chapter—Board—Variance from adopted standards. Exceptions from the operation of the provisions of this chapter may be made in any case where in the opinion of the supervisor of purchasing, the attorney general and the commissioner of the employment security department, or a majority of them who are hereby constituted a board for

such purpose, the articles so produced or manufactured do not meet the reasonable requirements of such departments, institutions, or agencies of the state of Washington. In any case where the requisition made cannot be complied with on account of an insufficient supply of articles or supplies required, the secretary may grant an exemption to such requisitioning department or agency of the state of Washington. No department, institution, or agency of the state of Washington shall be allowed to evade the intent and meaning of this section by slight variations from adopted standards when the articles produced or manufactured by such institutional industries are reasonably adapted to the actual needs of such departments, institutions, or agencies of the state of Washington. [1979 c 141 § 261; 1959 c 28 § 72.60.200. Prior: 1957 c 30 § 4. Formerly RCW 43.95.190.]

Attorney general: Chapter 43.10 RCW.

Employment security commissioner: RCW 50.08.010.

Supervisor of purchasing: RCW 43.19.180.

72.60.210 Vouchers not to be questioned for violation of chapter—Violation is malfeasance in office. No voucher, certificate, or warrant issued on the state treasurer by any such department, institution, or agency of the state of Washington shall be questioned by him or by the state auditor on the grounds that this chapter has not been complied with by such department, institution, or agency, but if intentional violation of this chapter continues after notice from the governor to desist, such violation shall constitute a malfeasance in office and shall subject the officers responsible for this violation to suspension or removal from office, as may be provided by law in other cases of malfeasance. [1959 c 28 § 72.60.210. Prior: 1957 c 30 § 5. Formerly RCW 43.95.200.]

72.60.220 List of goods to be supplied to all departments, institutions, agencies. The department may cause to be prepared annually, at such times as it may determine, lists containing the descriptions of all articles and supplies manufactured and produced pursuant to the provisions of this chapter; copies of such list shall be sent to the supervisor of purchasing and to all departments, institutions and agencies of the state of Washington. [1959 c 28 § 72.60.220. Prior: 1957 c 30 § 6. Formerly RCW 43.95.210.]

72.60.230 Declaration of police power—Construction of chapter. This chapter shall be deemed an exercise of the police power of the state for the protection of the health, welfare, peace and safety of the people and shall be liberally construed for the accomplishment of that purpose. [1959 c 28 § 72.60.230. Prior: 1957 c 30 § 3. Formerly RCW 43.95.220.]

72.60.240 Institutional industries revolving fund—Established—Composition—RCW 43.01.050 not applicable. There is hereby established under the supervision and control of the secretary of social and health services a fund to be known as the institutional industries revolving fund, which shall consist of all funds collected and all profits which shall hereafter accrue from

the industrial and agricultural operations under the jurisdiction of the institutional industries commission, and such funds appropriated by the legislature from the state institutional revolving account of the state general fund to the institutional industries revolving fund created by this section. The provisions of RCW 43.01.050 shall not be applicable to such fund, nor to any of the moneys received, collected or deposited in such fund. [1979 c 141 § 263; 1959 c 273 § 1.]

State institutional revolving account abolished: "From and after the first day of August, 1959, the state institutional revolving account in the state general fund is hereby abolished." [1959 c 273 § 7.]

Moneys transferred: "All moneys to the credit of the state institutional revolving account of the state general fund on the first day of August, 1959, and all moneys thereafter paid to the state treasurer to the credit of such account in the general fund are hereby transferred to the state institutional industries fund created by this act." [1959 c 273 § 8.]

Payment of warrants drawn on revolving account: "From and after the first day of August, 1959, all warrants drawn on the state institutional revolving account in the general fund of the state treasury and not presented for payment, shall be paid from the state institutional industries revolving fund." [1959 c 273 § 9.]

72.60.250 Institutional industries revolving fund—Custodian—Deposits—Depositories—Petty cash. The institutional industries revolving fund shall be deposited by the state treasurer, who shall be the custodian of such fund, in such depository or depositories as may be authorized by law to accept state funds to the credit of a fund to be designated the institutional industries revolving fund, which fund shall not be a state fund and shall at all times be kept segregated and set apart from all other funds and in trust for the purposes as set forth in RCW 72.60.260 and chapter 72.60 RCW.

All moneys received by the secretary, or any employee, from the operation of the industrial or agricultural programs under the jurisdiction of the institutional industries commission, except an amount of petty cash for each day's needs as fixed by resolution of the institutional industries commission, shall be paid over by the secretary to the state treasurer each day, and as often during the day as advisable, who shall deposit the same forthwith as demand deposits to the credit of the institutional industries revolving fund in a depository or depositories selected by the state treasurer under the terms of this section. [1979 c 141 § 262; 1959 c 273 § 2.]

72.60.260 Institutional industries revolving fund—Expenses payable from fund. All expenses arising in the administration of the industrial and agricultural programs of the department of social and health services under the jurisdiction of the institutional industries commission, including the payment of expenses of the members of the commission and the salaries of employees administering such programs and all expenditures incurred in establishing, maintaining, and operating the industrial and agricultural programs of the department of social and health services, shall be paid from the institutional industries revolving fund, subject to the approval of the institutional industries commission. [1979 c 141 § 264; 1959 c 273 § 3.]

Chapter 72.62

VOCATIONAL EDUCATION PROGRAMS

72.60.270 Institutional industries revolving fund—Excess moneys. At such times as the moneys in the institutional industries revolving fund exceed such amount as shall be necessary for the efficient operation of the institutional industries program to be determined by periodic audits of the director of financial management, the excess shall be forwarded and paid over by the secretary to the state treasurer for deposit in the general fund of the state treasury. [1979 c 151 § 173; 1971 ex.s. c 189 § 11; 1959 c 273 § 4.]

72.60.280 Reports to governor, legislature—Institutional industries plan. (1) The commission shall prepare annually a report to the governor and the legislature, which report shall contain:

- (a) A detailed financial statement for each industrial enterprise;
- (b) Reasons for approving or terminating industrial enterprises;
- (c) Summary of plans to develop additional enterprises;
- (d) Assessment of productivity of goods;
- (e) Amounts of goods sold and identification of purposes;
- (f) Extent of cooperation with vocational educational programs;
- (g) Number of inmates employed and hours worked;
- (h) Average salary paid;
- (i) Number of state employees utilized;
- (j) Summary of inmate-operated businesses; and
- (k) Any further information requested by the governor or the legislature.

(2) The secretary shall submit to the legislature, no later than June 30, 1980, a comprehensive institutional industries plan which shall include:

- (a) A history of institutional industries in the state of Washington;
- (b) Status of existing institutional industries programs;
- (c) Status of proposed programs or programs pending operation, to include:
 - (i) Program design and staffing requirements, with particular emphasis on the Washington corrections center and new authorized facilities;
 - (ii) Inmate employment classification and related salaries;
 - (iii) Related training programs for inmates and staff;
 - (iv) Goals and objectives for improving inmate payment of restitution, family support, and cost of confinement;
 - (v) Capital expenditures;
 - (vi) Operational expenditures, including full-time equivalent staff classification; and
 - (vii) Sales promotion plans;
- (d) An extensive survey of goods and services which can be produced for state and local governments; and
- (e) Coordination with work release programs established pursuant to chapter 72.65 RCW. [1979 1st ex.s. c 160 § 5; 1977 c 75 § 86; 1971 ex.s. c 189 § 12; 1959 c 273 § 5.]

Sections	Purpose.
72.62.010	Purpose.
72.62.020	Definitions.
72.62.030	Sale of products, etc.—Recovery of costs, etc.
72.62.040	Crediting of proceeds of sales.
72.62.050	Trade advisory and apprenticeship committees.

72.62.010 Purpose. The legislature declares that programs of vocational education are essential to the habilitation and rehabilitation of residents of state correctional institutions and facilities. It is the purpose of this chapter to provide for greater reality and relevance in the vocational education programs within the correctional institutions of the state. [1972 ex.s. c 7 § 1.]

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

The term "vocational education" means a planned series of learning experiences, the specific objective of which is to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or sub-professionals in recognized occupations and in new and emerging occupations, but shall not mean programs the primary characteristic of which is repetitive work for the purpose of production, including the institutional industries program. [1972 ex.s. c 7 § 2.]

72.62.030 Sale of products, etc.—Recovery of costs, etc. Products goods, wares, articles, or merchandise manufactured or produced by residents of state correctional institutions or facilities within or in conjunction with vocational education programs for the training, habilitation, and rehabilitation of inmates may be sold on the open market, at public auction. When services are performed by residents within or in conjunction with such vocational education programs, the cost of materials used and the value of depreciation of equipment used may be recovered. [1972 ex.s. c 7 § 3.]

72.62.040 Crediting of proceeds of sales. The secretary of the department of social and health services shall credit the proceeds derived from the sale of such products, goods, wares, articles, or merchandise manufactured or produced by inmates of state correctional institutions within or in conjunction with vocational education programs to the institution where manufactured or produced to be deposited in a revolving fund to be expended for the purchase of supplies, materials and equipment for use in vocational education. [1972 ex.s. c 7 § 4.]

72.62.050 Trade advisory and apprenticeship committees. Labor-management trade advisory and apprenticeship committees shall be constituted by the department for each vocation taught within the vocational education programs in the state correctional system. [1972 ex.s. c 7 § 5.]

Chapter 72.64

LABOR AND EMPLOYMENT OF PRISONERS

Sections

- 72.64.010 Useful employment of prisoners—Contract system barred.
- 72.64.020 Rules and regulations.
- 72.64.030 Prisoners required to work—Private benefit of enforcement officer prohibited.
- 72.64.040 Crediting of earnings—Payment.
- 72.64.050 Branch institutions—Honor camps for certain purposes.
- 72.64.060 Labor camps authorized—Type of work permitted—Contracts.
- 72.64.065 Industrial insurance—Application to certain inmates—Payment of premiums and assessments.
- 72.64.070 Industrial insurance—Eligibility for employment—Procedure—Return.
- 72.64.080 Industrial insurance—Duties of employing agency—Costs—Supervision.
- 72.64.090 Industrial insurance—Department's jurisdiction.
- 72.64.100 Regional jail camps—Authorized—Purposes—Rules.
- 72.64.110 Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner (as amended by 1979 c 147).
- 72.64.110 Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner (as amended by 1979 c 141).

Contract system barred: State Constitution Art. 2 § 29.

Institutional industries commission: Chapter 72.60 RCW.

Labor prescribed by board of prison terms and paroles: RCW 9.95.090.

72.64.010 Useful employment of prisoners—Contract system barred. The secretary shall have the power and it shall be his duty to provide for the useful employment of prisoners in the adult correctional institutions: *Provided*, That no prisoners shall be employed in what is known as the contract system of labor. [1979 c 141 § 265; 1959 c 28 § 72.64.010. Prior: 1943 c 175 § 1; Rem. Supp. 1943 § 10279–1. Formerly RCW 72.08.220.]

Contract system barred: State Constitution Art. 2 § 29.

72.64.020 Rules and regulations. The secretary shall make the necessary rules and regulations governing the employment of prisoners, the conduct of all such operations, and the disposal of the products thereof, under such restrictions as provided by law. [1979 c 141 § 266; 1959 c 28 § 72.64.020. Prior: 1943 c 175 § 2; Rem. Supp. 1943 § 10279–2. Formerly RCW 72.08.230.]

72.64.030 Prisoners required to work—Private benefit of enforcement officer prohibited. Every prisoner in the Washington state penitentiary or reformatory or other state penal or correctional institution shall be required to work in such manner as may be prescribed by the secretary, other than for the private financial benefit of any enforcement officer. [1979 c 141 § 267; 1961 c 171 § 1; 1959 c 28 § 72.64.030. Prior: 1927 c 305 § 1; RRS § 10223–1.]

72.64.040 Crediting of earnings—Payment. Where a prisoner is employed at any occupation for which pay is allowed or permitted, or at any gainful occupation

from which the state derives an income, the department shall credit the prisoner with the total amount of his earnings.

The amount of earnings credited but unpaid to a prisoner may be paid to the prisoner's spouse, children, mother, father, brother, or sister as the inmate may direct upon approval of the superintendent. Upon release, parole, or discharge, all unpaid earnings of the prisoner shall be paid to him. [1973 1st ex.s. c 154 § 105; 1959 c 28 § 72.64.040. Prior: 1957 c 19 § 1; 1927 c 305 § 3; RRS § 10223–3. Formerly RCW 72.08.250.]

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

72.64.050 Branch institutions—Honor camps for certain purposes. The secretary shall also have the power to establish temporary branch institutions for the state penitentiary, state reformatory and other penal and correctional institutions of the state in the form of honor camps for the employment of prisoners therein in farming, reforestation, wood-cutting, land clearing, processing of foods in state canneries, forest fire fighting, forest fire suppression and prevention, stream clearance, watershed improvement, development of parks and recreational areas and other work to conserve the natural resources and protect and improve the public domain and construction of water supply facilities to state institutions. [1979 c 141 § 268; 1961 c 171 § 2; 1959 c 28 § 72.64.050. Prior: 1943 c 175 § 3; Rem. Supp. 1943 § 10279–3. Formerly RCW 72.08.240.]

Leaves of absence for inmates: RCW 72.01.370, 72.01.380.

72.64.060 Labor camps authorized—Type of work permitted—Contracts. Any department, division, bureau, commission, or other agency of the state of Washington or any agency of any political subdivision thereof or the federal government may use, or cause to be used, prisoners confined in state penal or correctional institutions to perform work necessary and proper, to be done by them at camps to be established pursuant to the authority granted by RCW 72.64.060 through 72.64.090: *Provided*, That such prisoners shall not be authorized to perform work on any public road, other than access roads to forestry lands. The secretary may enter into contracts for the purposes of RCW 72.64.060 through 72.64.090. [1979 c 141 § 269; 1961 c 171 § 3; 1959 c 28 § 72.64.060. Prior: 1955 c 128 § 1. Formerly RCW 43.28.500.]

72.64.065 Industrial insurance—Application to certain inmates—Payment of premiums and assessments. From and after July 1, 1973, any inmate working in a department of natural resources adult honor camp established and operated pursuant to RCW 72.64.050, 72.64.060, and 72.64.100 shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court

of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter enacted, or to the benefits of chapter 51.36 RCW relating to medical aid.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1972 ex.s. c 40 § 3.]

72.64.070 Industrial insurance—Eligibility for employment—Procedure—Return. The department shall determine which prisoners shall be eligible for employment under RCW 72.64.060, and shall establish and modify lists of prisoners eligible for such employment, upon the requisition of an agency mentioned in RCW 72.64.060. The secretary may send to the place, and at the time designated, the number of prisoners requisitioned, or such number thereof as have been determined to be eligible for such employment and are available. No prisoner shall be eligible or shall be released for such employment until his eligibility therefor has been determined by the department.

The secretary may return to prison any prisoner transferred to camp pursuant to this section, when the need for such prisoner's labor has ceased or when the prisoner is guilty of any violation of the rules and regulations of the prison or camp. [1979 c 141 § 270; 1959 c 28 § 72.64.070. Prior: 1955 c 128 § 2. Formerly RCW 43.28.510.]

72.64.080 Industrial insurance—Duties of employing agency—Costs—Supervision. The agency providing for prisoners under RCW 72.64.060 through 72.64.090 shall designate and supervise all work done under the provisions thereof. The agency shall provide, erect and maintain any necessary camps, except that where no funds are available to the agency, the department may provide, erect and maintain the necessary camps. The secretary shall supervise and manage the necessary camps and commissaries. [1979 c 141 § 271; 1959 c 28 § 72.64.080. Prior: 1955 c 128 § 3. Formerly RCW 43.28.520.]

72.64.090 Industrial insurance—Department's jurisdiction. The department shall have full jurisdiction at all times over the discipline and control of the prisoners performing work under RCW 72.64.060 through 72.64.090. [1959 c 28 § 72.64.090. Prior: 1955 c 128 § 4. Formerly RCW 43.28.530.]

72.64.100 Regional jail camps—Authorized—Purposes—Rules. The secretary is authorized to establish and operate regional jail camps for the confinement, treatment, and care of persons sentenced to jail terms in excess of thirty days, including persons so imprisoned as a condition of probation. The secretary shall make rules and regulations governing the eligibility for commitment or transfer to such camps and rules and regulations for the government of such camps. Subject to the rules and regulations of the secretary, and if there

is in effect a contract entered into pursuant to RCW 72.64.110, a county prisoner may be committed to a regional jail camp in lieu of commitment to a county jail or other county detention facility. [1979 c 141 § 272; 1961 c 171 § 4.]

72.64.110 Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner (as amended by 1979 c 147). (1) The director may enter into a contract with any county of the state, upon the request of the sheriff thereof, wherein the director agrees to furnish confinement, care, treatment, and employment of county prisoners. The county shall reimburse the state for the cost of such services. Each county shall pay to the state treasurer the amounts found to be due.

(2) The director shall accept such county prisoner if he believes that the prisoner can be materially benefited by such confinement, care, treatment and employment, and if adequate facilities to provide such care are available. No such person shall be transported to any facility under the jurisdiction of the director until the director has notified the referring court of the place to which said person is to be transmitted and the time at which he can be received.

(3) The sheriff of the county in which such an order is made placing a misdemeanant in a jail camp pursuant to this chapter, or any other peace officer designated by the court, shall execute an order placing such county prisoner in the jail camp or returning him therefrom to the court.

(4) The director may return to the committing authority, or to confinement according to his sentence, any person committed or transferred to a regional jail camp pursuant to this chapter when there is no suitable employment or when such person is guilty of any violation of rules and regulations of the regional jail camp. [1979 c 147 § 1; 1961 c 171 § 5.]

72.64.110 Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner (as amended by 1979 c 141). (1) The secretary may enter into a contract, with the approval of the director of financial management, with any county of the state, upon the request of the sheriff thereof, wherein the secretary agrees to furnish confinement, care, treatment, and employment of county prisoners. The county shall reimburse the state for the cost of such services, such cost to be determined by the director of financial management. Each county shall pay to the state treasurer the amounts found to be due.

(2) The secretary shall accept such county prisoner if he believes that the prisoner can be materially benefited by such confinement, care, treatment and employment, and if adequate facilities to provide such care are available. No such person shall be transported to any facility under the jurisdiction of the secretary until the secretary has notified the referring court of the place to which said person is to be transmitted and the time at which he can be received.

(3) The sheriff of the county in which such an order is made placing a misdemeanant in a jail camp pursuant to this chapter, or any other peace officer designated by the court, shall execute an order placing such county prisoner in the jail camp or returning him therefrom to the court.

(4) The secretary may return to the committing authority, or to confinement according to his sentence, any person committed or transferred to a regional jail camp pursuant to this chapter when there is no suitable employment or when such person is guilty of any violation of rules and regulations of the regional jail camp. [1979 c 141 § 273; 1961 c 171 § 5.]

Reviser's note: RCW 72.64.110 was amended twice during the 1979 regular session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at the same legislative session, see RCW 1.12.025.

Chapter 72.65

WORK RELEASE PROGRAM

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72.65.020	Places of confinement—Extension of limits authorized, conditions—Lease for commercial enterprise, expiration date.
72.65.030	Application of prisoner to participate in program—Contents of application.
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72.65.900	Effective date—1967 c 17.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

72.65.010 Definitions. As used in this chapter, the following terms shall have the following meanings:

(1) "Department" shall mean the department of social and health services.

(2) "Secretary" shall mean the secretary of social and health services.

(3) "State correctional institutions" shall mean and include the Washington state penitentiary; the Washington corrections center; the Washington state reformatory; the Clallam Bay honor camp in Clallam county; the Larch Mountain honor camp in Clark county; the Washougal honor camp in Skamania county; the Okanogan honor camp in Okanogan county; and such other state correctional institutions, camps or facilities as may hereafter be established pursuant to law under the jurisdiction of the department for the treatment of convicted felons sentenced to a term of confinement.

(4) "Prisoner" shall mean a person either male or female, convicted of a felony and sentenced by the superior court to a term of confinement and treatment in a state correctional institution under the jurisdiction of the department.

(5) "Superintendent" shall mean the superintendent of a state correctional institution, camp or other facility now or hereafter established under the jurisdiction of the department pursuant to law. [1979 c 141 § 274; 1967 c 17 § 1.]

Administrative departments and agencies—General provisions: RCW 43.17.010, 43.17.020.

72.65.020 Places of confinement—Extension of limits authorized, conditions—Lease for commercial enterprise, expiration date. (1) The secretary is authorized to extend the limits of the place of confinement and treatment within the state of any prisoner convicted of a

felony, sentenced to a term of confinement and treatment by the superior court, and serving such sentence in a state correctional institution under the jurisdiction of the department, by authorizing a work release plan for such prisoner, permitting him, under prescribed conditions, to do any of the following:

(a) Work at paid employment.

(b) Participate in a vocational training program: *Provided*, That the tuition and other expenses of such a vocational training program shall be paid by the prisoner, by someone in his behalf, or by the department: *Provided further*, That any expenses paid by the department shall be recovered by the department pursuant to the terms of RCW 72.65.050.

(c) Interview or make application to a prospective employer or employers, or enroll in a suitable vocational training program.

Such work release plan of any prison shall require that he be confined during the hours not reasonably necessary to implement the plan, in (1) a state correctional institution, (2) a county or city jail, which jail has been approved after inspection pursuant to *RCW 72.01.420, or (3) any other appropriate, supervised facility, after an agreement has been entered into between the department and the appropriate authorities of the facility for the housing of work release prisoners.

(2) The secretary may lease or permit the use of a portion of any correctional facility, including necessary buildings, for a term not to exceed twenty years, to a private business organization for the purpose of establishing and operating a commercial enterprise deemed by the secretary to be consistent with the appropriate training and rehabilitation of prisoners.

Any business organization operating a commercial enterprise under this section may employ any inmates of the institution upon whose grounds it operates after such inmates have been authorized by the secretary to participate in the program. For the purposes of Washington law, the inmates participating in the program are deemed work releasees and are subject to all of the provisions of chapter 72.65 RCW.

Participants in the program are deemed to be parolees within the purview of 49 U.S.C. Sec. 60, and, except as prohibited by applicable provisions of the United States Code, prisoner participants in the program may be employed in the manufacture and processing of goods, wares, and merchandise for introduction into interstate commerce.

Any business organization established or participating in the program authorized under this section shall be deemed a private enterprise and subject to all the laws, rules, and regulations of this state governing the operation of similar business enterprises elsewhere in the state, and shall in no event pay prisoner participants in the program less than sixty percent of the prevailing wages for work of a similar nature performed by employees with similar skills in the locality in which the work is being performed: *Provided*, That the provisions of this subsection (2) shall expire and be of no further force and effect after January 1, 1984. [1979 1st ex.s. c 160 § 1; 1979 c 141 § 275; 1967 c 17 § 2.]

*Reviser's note: RCW 72.01.420 was repealed by 1977 ex.s. c 316 § 27.

72.65.030 Application of prisoner to participate in program—Contents of application. Any prisoner serving a sentence in a state correctional institution may make application to participate in the work release program to the superintendent of the institution in which he is confined. Such application shall set forth the name and address of his proposed employer or employers or shall specify the vocational training program, if any, in which he is enrolled. It shall include a statement to be executed by such prisoner that if his application be approved he agrees to abide faithfully by all terms and conditions of the particular work release plan adopted for him. It shall further set forth such additional information as the department or the secretary shall require. [1979 c 141 § 276; 1967 c 17 § 3.]

72.65.040 Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication. The superintendent of the state correctional institution in which a prisoner who has made application to participate in the work release program is confined, after careful study of the prisoner's conduct, attitude and behavior within the institutions under the jurisdiction of the department, his criminal history and all other pertinent case history material, shall determine whether or not there is reasonable cause to believe that the prisoner will honor his trust as a work release participant. After having made such determination, the superintendent, in his discretion, may deny the prisoner's application, or recommend to the secretary, or such officer of the department as the secretary may designate, that the prisoner be permitted to participate in the work release program. The secretary or his designee, may approve, reject, modify, or defer action on such recommendation. In the event of approval, the secretary or his designee, shall adopt a work release plan for the prisoner, which shall constitute an extension of the limits of confinement and treatment of the prisoner when released pursuant thereto, and which shall include such terms and conditions as may be deemed necessary and proper under the particular circumstances. The plan shall be signed by the prisoner under oath that he will faithfully abide by all terms and conditions thereof. Further, as a condition, the plan shall specify where such prisoner shall be confined when not released for the purpose of the work release plan. At any time after approval has been granted to any prisoner to participate in the work release program, such approval may be revoked, and if the prisoner has been released on a work release plan, he may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the secretary or his designee. Any prisoner who has been initially rejected either by the superintendent or the secretary or his designee, may reapply for permission to participate in a work release program after a period of time has elapsed from the date of such rejection. This period of time shall be determined by the secretary or his designee, according to the

individual circumstances in each case. [1979 c 141 § 277; 1967 c 17 § 4.]

72.65.050 Disposition of earnings. A prisoner employed under a work release plan shall surrender to the secretary, or to the superintendent of such state correctional institution as shall be designated by the secretary in the plan, his total earnings, less payroll deductions required by law, or such payroll deductions as may reasonably be required by the nature of the employment and less such amount which his work release plan specifies he should retain to help meet his personal needs, including costs necessary for his participation in the work release plan such as expenses for travel, meals, clothing, tools and other incidentals. The secretary, or the superintendent of the state correctional institution designated in the work release plan shall deduct from such earnings, and make payments from such work release participant's earnings in the following order of priority:

(1) Reimbursement to the department for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), or for expenses incident to a work release plan pursuant to RCW 72.65.090.

(2) Payment of board and room charges for the work release participant: *Provided*, That if the participant is housed at a state correctional institution, the average daily per capita cost for the operation of such correctional institution, excluding capital outlay expenditures, shall be paid from the work release participant's earnings to the general fund of the state treasury: *Provided further*, That if such work release participant is housed in another facility pursuant to agreement, then the charges agreed to between the department and the appropriate authorities of such facility shall be paid from the participant's earnings to such appropriate authorities.

(3) Payments for the necessary support of the work release participant's dependents, if any.

(4) Payments to creditors of the work release participant, which may be made at his discretion and request, upon proper proof of personal indebtedness.

(5) Payments to the work release participant himself upon parole or discharge, or for deposit in his personal account if returned to a state correctional institution for confinement and treatment. [1979 c 141 § 278; 1967 c 17 § 5.]

72.65.060 Earnings not subject to legal process. The earnings of a work release participant shall not be subject to garnishment, attachment or execution while such earnings are either in the possession of the employer or any state officer authorized to hold such funds. [1967 c 17 § 6.]

72.65.070 Wilfully failing to return—Deemed escapee and fugitive—Penalty. Any prisoner approved for placement under a work release plan who wilfully fails to return to the designated place of confinement at the time specified shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with the terms of *chapter 9.31 RCW. The provisions of this section shall

be incorporated in every work release plan adopted by the department. [1967 c 17 § 7.]

***Reviser's note:** "chapter 9.31 RCW" was repealed by 1975 1st ex.s. c 260 § 9A.92.010. For later enactment see chapter 9A.76 RCW.

72.65.080 Contracts with authorities for payment of expenses for housing participants—Leasing of housing facilities. The secretary may enter into contracts with the appropriate authorities for the payment of the cost of feeding and lodging and other expenses of housing work release participants. Such contracts may include any other terms and conditions as may be appropriate for the implementation of the work release program. In addition the secretary is authorized to acquire, by lease, appropriate facilities for the housing of work release participants and providing for their subsistence and supervision. Such work release participants placed in leased facilities shall be required to reimburse the department of social and health services the per capita cost of subsistence and lodging in accordance with the provisions and in the priority established by RCW 72.65.050(2). The location of such facilities shall be subject to the zoning laws of the city or county in which they may be situated. [1979 c 141 § 279; 1969 c 109 § 1; 1967 c 17 § 8.]

Effective date—1969 c 109: "This act shall become effective on July 1, 1969." [1969 c 109 § 2.]

72.65.090 Transportation, clothing, supplies, etc., for participants. The department may provide transportation for work release participants to the designated places of housing under the work release plan, and may supply suitable clothing and such other equipment, supplies and other necessities as may be reasonably needed for the implementation of the plans adopted for such participants: *Provided*, That costs and expenditures incurred for this purpose may be deducted by the department from the earnings of the participants. [1967 c 17 § 9.]

72.65.100 Powers and duties of secretary—Rules and regulations—Cooperation of other state agencies enjoined. The secretary is authorized to make rules and regulations for the administration of the provisions of this chapter to administer the work release program. In addition, the department shall:

- (1) Supervise and consult with work release participants;
- (2) Locate available employment or vocational training opportunities for qualified work release participants;
- (3) Effect placement of work release participants under the program;
- (4) Collect, account for and make disbursement from earnings of work release participants under the provisions of this chapter;
- (5) Promote public understanding and acceptance of the work release program.

All state agencies shall cooperate with the department of social and health services in the administration of the work release program as provided by this chapter. [1979 c 141 § 280; 1967 c 17 § 10.]

[Title 72 RCW (1979 Ed.)—p 60]

72.65.110 Earnings to be deposited in personal funds—Disbursements. All earnings of work release participants shall be deposited by the secretary, or the superintendent of a state correctional institution designated by the secretary in the work release plan, in personal funds. All disbursements from such funds shall be made only in accordance with the work release plans of such participants and in accordance with the provisions of this chapter. [1979 c 141 § 281; 1967 c 17 § 11.]

72.65.120 Participants not considered agents or employees of the state—Contracting with persons, companies, etc., for labor of participants prohibited—Employee benefits and privileges extended to. All participants who become engaged in employment or training under the work release program shall not be considered as agents, employees or involuntary servants of state and the department is prohibited from entering into a contract with any person, co-partnership, company or corporation for the labor of any participant under its jurisdiction: *Provided*, That such work release participants shall be entitled to all benefits and privileges in their employment under the provisions of this chapter to the same extent as other employees of their employer, except that such work release participants shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged on expiration of their maximum sentences. [1967 c 17 § 12.]

72.65.130 Authority of board of prison terms and paroles not impaired. This chapter shall not be construed as affecting the authority of the board of prison terms and paroles pursuant to the provisions of chapter 9.95 RCW over any person who has been approved for participation in the work release program. [1971 ex.s. c 58 § 1; 1967 c 17 § 13.]

Effective date—1971 ex.s. c 58: See note following RCW 72.66.010.

72.65.900 Effective date—1967 c 17. This act shall become effective on July 1, 1967. [1967 c 17 § 14.]

Chapter 72.66

FURLOUGHS FOR PRISONERS

Sections

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72.66.060	Wilfully failing to return—Deemed escapee and fugitive—Penalty.
72.66.070	Transportation, clothing and funds for furloughed prisoners.
72.66.080	Powers and duties of secretary—Certain agreements—Rules and regulations.
72.66.090	Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough.

Reviser's note: Throughout this chapter "this act" has been changed to "this chapter". "This act" [1971 ex.s. c 58] consists of this chapter and the 1971 amendment to RCW 72.65.130.

72.66.010 Definitions. As used in this chapter the following words shall have the following meanings:

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

(2) "Furlough" means an authorized leave of absence for an eligible resident, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or corrections official while on such leave.

(3) "Emergency furlough" means a specially expedited furlough granted to a resident to enable him to meet an emergency situation, such as the death or critical illness of a member of his family.

(4) "Resident" means a person convicted of a felony and serving a sentence for a term of confinement in a state correctional institution or facility, or a state approved work or training release facility.

(5) "Secretary" means the secretary of the department of social and health services, or his designee or designees. [1973 c 20 § 2; 1971 ex.s. c 58 § 2.]

Construction—Prior rules and regulations—1973 c 20: "The provisions of this 1973 amendatory act shall not affect the validity of any rule or regulation adopted prior to the effective date of this 1973 amendatory act, if such rule or regulation is not in conflict with any provision of this 1973 amendatory act." [1973 c 20 § 17.] This applies to the 1973 amendment to this section, to RCW 72.66.012 through 72.66.044, and to the repeal of RCW 72.66.020, 72.66.030 and 72.66.040.

The effective date of 1973 c 20 was June 7, 1973.

Effective date—1971 ex.s. c 58: "This act shall become effective on July 1, 1971." [1971 ex.s. c 58 § 11.] This applies to this chapter and RCW 72.65.130.

72.66.012 Granting of furloughs authorized. The secretary may grant a furlough but only if not precluded from doing so under RCW 72.66.014, 72.66.016, 72.66.018, 72.66.024, 72.66.034, or 72.66.036. [1973 c 20 § 3.]

72.66.014 Ineligibility grounds. A resident may apply for a furlough if he is not precluded from doing so under this section. A resident shall be ineligible to apply for a furlough if:

(1) He is not classified by the secretary as eligible for or on minimum security status; or

(2) His minimum term of imprisonment has not been set; or

(3) He has a valid detainer pending and the agency holding the detainer has not provided written approval for him to be placed on a furlough-eligible status. Such written approval may include either specific approval for

a particular resident or general approval for a class or group of residents. [1973 c 20 § 4.]

72.66.016 Minimum time served requirement. A furlough shall not be granted to a resident if the furlough would commence prior to the time the resident has served the minimum amounts of time provided under this section:

(1) If his minimum term of imprisonment is longer than twelve months, he shall have served at least six months of the term;

(2) If his minimum term of imprisonment is less than twelve months, he shall have served at least ninety days and shall have no longer than six months left to serve on his minimum term;

(3) If he is serving a mandatory minimum term of confinement, he shall have served all but the last six months of such term. [1973 c 20 § 5.]

72.66.018 Grounds for granting furlough. A furlough may only be granted to enable the resident:

(1) To meet an emergency situation, such as death or critical illness of a member of his family;

(2) To obtain medical care not available in a facility maintained by the department;

(3) To seek employment or training opportunities, but only when:

(a) There are scheduled specific work interviews to take place during the furlough;

(b) The resident has been approved for work or training release but his work or training placement has not occurred or been concluded; or

(c) When necessary for the resident to prepare a parole plan for a parole meeting scheduled to take place within one hundred and twenty days of the commencement of the furlough;

(4) To make residential plans for parole which require his personal appearance in the community;

(5) To care for business affairs in person when the inability to do so could deplete the assets or resources of the resident so seriously as to affect his family or his future economic security;

(6) To visit his family for the purpose of strengthening or preserving relationships, exercising parental responsibilities, or preventing family division or disintegration; or

(7) For any other purpose deemed to be consistent with plans for rehabilitation of the resident. [1973 c 20 § 6.]

72.66.022 Application—Contents. Each resident applying for a furlough shall include in his application for the furlough:

(1) A furlough plan which shall specify in detail the purpose of the furlough and how it is to be achieved, the address at which the applicant would reside, the names of all persons residing at such address and their relationships to the applicant;

(2) A statement from the applicant's proposed sponsor that he agrees to undertake the responsibilities provided in RCW 72.66.024; and

(3) Such other information as the secretary shall require in order to protect the public or further the rehabilitation of the applicant. [1973 c 20 § 7.]

72.66.024 Sponsor. No furlough shall be granted unless the applicant for the furlough has procured a person to act as his sponsor. No person shall qualify as a sponsor unless he satisfies the secretary that he knows the applicant's furlough plan, is familiar with the furlough conditions prescribed pursuant to RCW 72.66.026, and submits a statement that he agrees to:

(1) See to it that the furloughed person is provided with appropriate living quarters for the duration of the furlough;

(2) Notify the secretary immediately if the furloughed person does not appear as scheduled, departs from the furlough plan at any time, becomes involved in serious difficulty during the furlough, or experiences problems that affect his ability to function appropriately;

(3) Assist the furloughed person in other appropriate ways, such as discussing problems and providing transportation to job interviews; and

(4) Take reasonable measures to assist the resident to return from furlough. [1973 c 20 § 8.]

72.66.026 Furlough terms and conditions. The terms and conditions prescribed under this section shall apply to each furlough, and each resident granted a furlough shall agree to abide by them.

(1) The furloughed person shall abide by the terms of his furlough plan.

(2) Upon arrival at the destination indicated in his furlough plan, the furloughed person shall, when so required, report to a state probation and parole officer in accordance with instructions given by the secretary prior to release on furlough. He shall report as frequently as may be required by the state probation and parole officer.

(3) The furloughed person shall abide by all local, state and federal laws.

(4) With approval of the state probation and parole officer designated by the secretary, the furloughed person may accept temporary employment during a period of furlough.

(5) The furloughed person shall not leave the state at any time while on furlough.

(6) Other limitations on movement within the state may be imposed as a condition of furlough.

(7) The furloughed person shall not, in any public place, drink intoxicating beverages or be in an intoxicated condition. A furloughed person shall not enter any tavern, bar, or cocktail lounge.

(8) A furloughed person who drives a motor vehicle shall:

(a) have a valid Washington driver's license in his possession,

(b) have the owner's written permission to drive any vehicle not his own or his spouse's,

(c) have at least minimum personal injury and property damage liability coverage on the vehicle he is driving, and

(d) observe all traffic laws.

(9) Each furloughed person shall carry with him at all times while on furlough a copy of his furlough order prescribed pursuant to RCW 72.66.028 and a copy of the identification card issued to him pursuant to RCW 72.66.032.

(10) The furloughed person shall comply with any other terms or conditions which the secretary may prescribe. [1973 c 20 § 9.]

72.66.028 Furlough order—Contents. Whenever the secretary grants a furlough, he shall do so by a special order which order shall contain each condition and term of furlough prescribed pursuant to RCW 72.66.026 and each additional condition and term which the secretary may prescribe as being appropriate for the particular person to be furloughed. [1973 c 20 § 10.]

72.66.032 Furlough identification card. The secretary shall issue a furlough identification card to each resident granted a furlough. The card shall contain the name of the resident and shall disclose the fact that he has been granted a furlough and the time period covered by the furlough. [1973 c 20 § 11.]

72.66.034 Applicant's personality and conduct—Examination. Prior to the granting of any furlough, the secretary shall examine the applicant's personality and past conduct and determine whether or not he represents a satisfactory risk for furlough. The secretary shall not grant a furlough to any person whom he believes represents an unsatisfactory risk. [1973 c 20 § 12.]

72.66.036 Furlough duration—Extension. (1) The furlough or furloughs granted to any one resident may not exceed thirty consecutive days or a total of sixty days during any twelve-month period.

(2) Absent unusual circumstances, each first furlough and each second furlough granted to a resident shall not exceed a period of five days and each emergency furlough shall not exceed forty-eight hours plus travel time.

(3) A furlough may be extended within the maximum time periods prescribed under this section. [1973 c 20 § 13.]

72.66.038 Furlough infractions—Reporting—Regaining custody. Any employee of the department having knowledge of a furlough infraction shall report the facts to the secretary. Upon verification, the secretary shall cause the custody of the furloughed person to be regained, and for this purpose may cause a warrant to be issued. [1973 c 20 § 14.]

72.66.042 Emergency furlough—Waiver of certain requirements. In the event of an emergency furlough, the secretary may waive all or any portion of RCW 72.66.014(2), 72.66.016, 72.66.022, 72.66.024, and 72.66.026. [1973 c 20 § 15.]

72.66.044 Application proceeding not deemed "contested case". Any proceeding involving an application for a furlough shall not be deemed a "contested case" under the provisions of chapter 34.04 RCW, the Administrative Procedure Act. [1973 c 20 § 16.]

72.66.050 Revocation or modification of furlough plan—Reapplication. At any time after approval has been granted for a furlough to any prisoner, such approval or order of furlough may be revoked, and if the prisoner has been released on an order of furlough, he may be returned to a state correctional institution, or the plan may be modified, in the discretion of the secretary. Any prisoner whose furlough application is rejected may reapply for a furlough after such period of time has elapsed as shall be determined at the time of rejection by the superintendent or secretary, whichever person initially rejected the application for furlough, such time period being subject to modification. [1971 ex.s. c 58 § 6.]

72.66.060 Wilfully failing to return—Deemed escapee and fugitive—Penalty. Any furloughed prisoner who wilfully fails to return to the designated place of confinement at the time specified in the order of furlough shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced to a term of confinement of not more than ten years. The provisions of this section shall be incorporated in every order of furlough granted by the department. [1971 ex.s. c 58 § 7.]

72.66.070 Transportation, clothing and funds for furloughed prisoners. The department may provide or arrange for transportation for furloughed prisoners to the designated place of residence within the state and may, in addition, supply funds not to exceed forty dollars and suitable clothing, such clothing to be returned to the institution on the expiration of furlough. [1971 ex.s. c 58 § 8.]

72.66.080 Powers and duties of secretary—Certain agreements—Rules and regulations. The secretary may enter into agreements with any agency of the state, a county, a municipal corporation or any person, corporation or association for the purpose of implementing furlough plans, and, in addition, may make such rules and regulations in furtherance of this chapter as he may deem necessary. [1971 ex.s. c 58 § 9.]

72.66.090 Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough. The secretary may issue warrants for the arrest of any prisoner granted a furlough, at the time of the revocation of such furlough, or upon the failure of the prisoner to report as designated in the order of furlough. Such arrest warrants shall authorize any law enforcement, probation and parole or peace officer of this state, or any other state where such prisoner may be located, to arrest such prisoner and to place him in physical custody pending his return to confinement in a state correctional institution. Any state probation and parole officer, if he has reasonable cause to believe that a person granted a furlough has violated a condition of his furlough, may suspend such person's furlough and arrest or cause the arrest and detention in physical custody of

the furloughed prisoner, pending the determination of the secretary whether the furlough should be revoked. The probation and parole officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending such furlough. Upon the basis of the report and such other information as the secretary may obtain, he may revoke, reinstate or modify the conditions of furlough, which shall be by written order of the secretary. If the furlough is revoked, the secretary shall issue a warrant for the arrest of the furloughed prisoner and his return to a state correctional institution. [1971 ex.s. c 58 § 10.]

Chapter 72.68

TRANSFER, REMOVAL, TRANSPORTATION— DETENTION CONTRACTS

Sections

72.68.010	Transfer of prisoners.
72.68.020	Transportation of prisoners.
72.68.031	Transfer or removal of person committed to or confined in correctional institution to institution for mentally ill.
72.68.032	Transfer or removal of person committed to or confined in institution for mentally ill to other institution.
72.68.035	Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined.
72.68.037	Transfer or removal of committed or confined persons—Record—Notice.
72.68.040	Contracts with other governmental units for detention of felons convicted in this state.
72.68.050	Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner.
72.68.060	Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings.
72.68.070	Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires.
72.68.075	Contracts with other states or territories for care, confinement or rehabilitation of female prisoners.
72.68.080	Federal prisoners, or from other state—Authority to receive.
72.68.090	Federal prisoners, or from other state—Per diem rate for keep.
72.68.100	Federal prisoners, or from other state—Space must be available.

Officers and guards as peace officers: RCW 9.94.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

Transfer of incorrigible juvenile: RCW 72.12.050.

Transfer of juvenile to correctional institution: RCW 72.13.070.

Western interstate corrections compact: Chapter 72.70 RCW.

72.68.010 Transfer of prisoners. Whenever in its judgment the best interests of the state or the welfare of any prisoner confined in any penal institution will be better served by his transfer to another institution the secretary may effect such transfer. [1979 c 141 § 282; 1959 c 28 § 72.68.010. Prior: 1955 c 245 § 2; 1935 c 114 § 5; RRS § 10249-5. Formerly RCW 9.95.180.]

72.68.020 Transportation of prisoners. (1) The secretary shall transport prisoners under guard:

(a) to and between the state penitentiary, the state reformatory and all other institutions under his supervision;

(b) from a county, city, or municipal jail to an institution mentioned in subparagraph (a) of this subsection and to a county, city or municipal jail from an institution mentioned in subparagraph (a) of this subsection.

(2) The secretary may employ necessary persons for such purpose. [1979 c 141 § 283; 1959 c 28 § 72.68.020. Prior: 1955 c 245 § 1. Formerly RCW 9.95.181.]

Officers and guards as peace officers: RCW 9.94.050.

72.68.031 Transfer or removal of person committed to or confined in correctional institution to institution for mentally ill. When, in the judgment of the secretary of the department of social and health services, the welfare of any person committed to or confined in any state correctional institution or facility necessitates that such person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of the mentally ill, the secretary is authorized to order and effect such move or transfer: *Provided*, That the sentence of such person shall continue to run as if he remained confined in a correctional institution or facility, and that such person shall not continue so detained or confined beyond the maximum term to which he was sentenced: *Provided, further*, That the secretary and the board of prison terms and paroles shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined at such institution or facility for the care of the mentally ill, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in the state correctional institutions or facilities. [1972 ex.s. c 59 § 1.]

72.68.032 Transfer or removal of person committed to or confined in institution for mentally ill to other institution. When, in the judgment of the secretary of the department of social and health services, the welfare of any person committed to or confined in any state institution or facility for the care of the mentally ill necessitates that such person be transferred or moved for observation, diagnosis, or treatment, or for different security status while being observed, diagnosed or treated to any other state institution or facility for the care of the mentally ill, the secretary is authorized to order and effect such move or transfer. [1972 ex.s. c 59 § 2.]

72.68.035 Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined. As used in RCW 72.68.031 and 72.68.032, the phrase "state institution or facility for the care of the mentally ill" shall mean any hospital, institution or facility operated and maintained by the state of Washington which has as its principal purpose the care of the mentally ill, whether such hospital, institution or facility is physically located within or outside the geographical or structural confines of a state correctional institution or facility: *Provided*, That whether a state institution or facility for the care of the mentally ill be physically located within or outside the geographical

or structural confines of a state correctional institution or facility, it shall be administered separately from the state correctional institution or facility, and in conformity with its principal purpose. [1972 ex.s. c 59 § 3.]

72.68.037 Transfer or removal of committed or confined persons—Record—Notice. Whenever a move or transfer is made pursuant to RCW 72.68.031 or 72.68.032, a record shall be made and the relatives, attorney, if any, and guardian, if any, of the person moved shall be notified of the move or transfer. [1972 ex.s. c 59 § 4.]

72.68.040 Contracts with other governmental units for detention of felons convicted in this state. The secretary may contract with the authorities of the federal government, or the authorities of any state of the United States or of any county or city in this state providing for the detention in an institution or jail operated by such governmental unit, of prisoners convicted of a felony in the courts of this state and sentenced to a term of imprisonment therefor in a state correctional institution for convicted felons under the jurisdiction of the department of social and health services. After the making of a contract under this section, prisoners sentenced to a term of imprisonment in a state correctional institution for convicted felons may be conveyed by the superintendent or his assistants to the institution or jail named in the contract. The prisoners shall be delivered to the authorities of the institution or jail, there to be confined until their sentences have expired or they are otherwise discharged by law, paroled or until they are returned to a state correctional institution for convicted felons for further confinement. [1979 c 141 § 284; 1967 c 60 § 1; 1959 c 47 § 1; 1959 c 28 § 72.68.040. Prior: 1957 c 27 § 1. Formerly RCW 9.95.184.]

72.68.050 Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner. Whenever a prisoner who is serving a sentence imposed by a court of this state is transferred from a state correctional institution for convicted felons under RCW 72.68.040 through 72.68.070, the superintendent shall send to the clerk of the court pursuant to whose order or judgment the prisoner was committed to a state correctional institution for convicted felons a notice of transfer, disclosing the name of the prisoner transferred and giving the name and location of the institution to which the prisoner was transferred. The superintendent shall keep a copy of all notices of transfer on file as a public record open to inspection; and the clerk of the court shall file with the judgment roll in the appropriate case a copy of each notice of transfer which he receives from the superintendent. [1967 c 60 § 2; 1959 c 47 § 2; 1959 c 28 § 72.68.050. Prior: 1957 c 27 § 2. Formerly RCW 9.95.185.]

72.68.060 Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings. Should the presence of any prisoner confined, under authority of RCW 72.68.040 through

72.68.070, in an institution of another state or the federal government or in a county or city jail, be required in any judicial proceeding of this state, the superintendent of a state correctional institution for convicted felons or his assistants shall, upon being so directed by the secretary, or upon the written order of any court of competent jurisdiction, or of a judge thereof, procure such prisoner, bring him to the place directed in such order and hold him in custody subject to the further order and direction of the secretary, or of the court or of a judge thereof, until he is lawfully discharged from such custody. The superintendent or his assistants may, by direction of the secretary or of the court, or a judge thereof, deliver such prisoner into the custody of the sheriff of the county in which he was convicted, or may, by like order, return such prisoner to a state correctional institution for convicted felons or the institution from which he was taken. [1979 c 141 § 285; 1967 c 60 § 3; 1959 c 47 § 3; 1959 c 28 § 72.68.060. Prior: 1957 c 27 § 3. Formerly RCW 9.95.186.]

72.68.070 Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires. Upon the expiration of any contract entered into under RCW 72.68.040 through 72.68.070, all prisoners of this state confined in such institution or jail shall be returned by the superintendent or his assistants to a state correctional institution for convicted felons of this state, or delivered to such other institution as the secretary has contracted with under RCW 72.68.040 through 72.68.070. [1979 c 141 § 286; 1967 c 60 § 4; 1959 c 47 § 4; 1959 c 28 § 72.68.070. Prior: 1957 c 27 § 4. Formerly RCW 9.95.187.]

72.68.075 Contracts with other states or territories for care, confinement or rehabilitation of female prisoners. The secretary is hereby authorized to contract for the care, confinement and rehabilitation of female prisoners of other states or territories of the United States, as more specifically provided in the Western Interstate Corrections Compact, as contained in chapter 72.70 RCW as now or hereafter amended. [1979 c 141 § 287; 1967 ex.s. c 122 § 12.]

72.68.080 Federal prisoners, or from other state—Authority to receive. All persons sentenced to prison by the authority of the United States or of any state or territory of the United States may be received by the department and imprisoned in the Washington state penitentiary or Washington state reformatory or the Washington correctional institution for women in accordance with the sentence of the court by which they were tried. The prisoners so confined shall be subject in all respects to discipline and treatment as though committed under the laws of this state. [1967 ex.s. c 122 § 10; 1959 c 28 § 72.68.080. Prior: 1951 c 135 § 1. Formerly RCW 72.08.350.]

72.68.090 Federal prisoners, or from other state—Per diem rate for keep. The secretary is authorized to enter into contracts with the proper officers or agencies

of the United States and of other states and territories of the United States relative to the per diem rate to be paid the state of Washington for the conditions of the keep of each prisoner. [1979 c 141 § 288; 1959 c 28 § 72.68.090. Prior: 1951 c 135 § 2. Formerly RCW 72.08.360.]

72.68.100 Federal prisoners, or from other state—Space must be available. The secretary shall not enter into any contract for the care or commitment of any prisoner of the federal government or any other state unless there is vacant space and unused facilities in the Washington state penitentiary or reformatory or the Washington correctional institution for women. [1979 c 141 § 289; 1967 ex.s. c 122 § 11; 1959 c 28 § 72.68.100. Prior: 1951 c 135 § 3. Formerly RCW 72.08.370.]

Chapter 72.70

WESTERN INTERSTATE CORRECTIONS COMPACT

Sections

72.70.010	Compact enacted—Provisions.
72.70.020	Secretary authorized to receive or transfer inmates pursuant to contract.
72.70.030	Responsibilities of courts, departments, agencies and officers.
72.70.040	Hearings.
72.70.050	Secretary may enter into contracts.
72.70.060	Secretary may provide clothing, etc., to inmate released in another state.
72.70.900	Severability—Liberal construction—1959 c 287.

Compacts for out-of-state supervision of parolees or probationers: RCW 9.95.270.

Interstate compact on juveniles: Chapter 13.24 RCW.

72.70.010 Compact enacted—Provisions. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

ARTICLE I—Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility except facilities for the mentally ill or mentally handicapped in which inmates may lawfully be confined.

ARTICLE III—Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV—Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said

officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the ending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending

state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V—Acts Not Reviewable In Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI—Federal Aid

Any state party to this compact may accept federal aid for use in connection with an institution or program, the use of which is or may be affected by this compact or any contract pursuant thereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided that if such program or activity is not part of the customary correctional regimen

the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII—Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

ARTICLE VIII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX—Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X—Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all

severable matters. [1977 ex.s. c 80 § 69; 1959 c 287 § 1.]

~~Purpose—Intent—Severability—~~1977 ex.s. c 80: See notes following RCW 4.16.190.

72.70.020 Secretary authorized to receive or transfer inmates pursuant to contract. The secretary of social and health services is authorized to receive or transfer an inmate as defined in Article II(d) of the Western Interstate Corrections Compact to any institution as defined in Article II(e) of the Western Interstate Corrections Compact within this state or without this state, if this state has entered into a contract or contracts for the confinement of inmates in such institutions pursuant to Article III of the Western Interstate Corrections Compact. [1979 c 141 § 290; 1959 c 287 § 2.]

72.70.030 Responsibilities of courts, departments, agencies and officers. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact. [1959 c 287 § 3.]

72.70.040 Hearings. The secretary and members of the board of prison terms and paroles are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV(f) of the Western Interstate Corrections Compact. Additionally, the secretary and members of the board of prison terms and paroles may hold out-of-state hearings in connection with the case of any inmate of this state confined in an institution of another state party to the Western Interstate Corrections Compact. [1979 c 141 § 291; 1959 c 287 § 4.]

72.70.050 Secretary may enter into contracts. The secretary of social and health services is hereby empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to Article III thereof. No such contract shall be of any force or effect until approved by the attorney general. [1979 c 141 § 292; 1959 c 287 § 5.]

72.70.060 Secretary may provide clothing, etc., to inmate released in another state. If any agreement between this state and any other state party to the Western Interstate Corrections Compact enables the release of an inmate of this state confined in an institution of another state to be released in such other state in accordance with Article IV(g) of this compact, then the secretary is authorized to provide clothing, transportation and funds to such inmate in accordance with the provisions of *RCW 72.08.343. [1979 c 141 § 293; 1959 c 287 § 6.]

*Reviser's note: "RCW 72.08.343" was repealed by 1971 ex.s. c 171 § 3. Later enactment, see RCW 72.02.100.

72.70.900 Severability—Liberal construction—1959 c 287. The provisions of this act shall be severable

and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to any other state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed. [1959 c 287 § 7.]

Chapter 72.72

CRIMINAL BEHAVIOR OF RESIDENTS OF INSTITUTIONS

Sections

72.72.010	Legislative intent.
72.72.020	Definitions.
72.72.030	Institutional impact account—Reimbursement to political subdivisions.
72.72.040	Reimbursement—Rules.

Reviser's note: 1979 1st ex.s. c 108 was to be added to chapter 72.06 RCW but has been codified as chapter 72.72 RCW.

72.72.010 Legislative intent. The legislature finds that political subdivisions in which state institutions are located incur a disproportionate share of the criminal justice costs due to criminal behavior of the residents of such institutions. To redress this inequity, it shall be the policy of the state of Washington to reimburse political subdivisions which have incurred such costs. [1979 1st ex.s. c 108 § 1.]

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

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

(2) "Political subdivisions" means counties, cities, and towns.

(3) "Institution" means any state institution operated by the department for the confinement of adult offenders committed pursuant to chapters 10.64, 10.77, and 71.06 RCW or juvenile offenders committed pursuant to chapter 13.40 RCW.

(4) "Secretary" means the secretary of social and health services. [1979 1st ex.s. c 108 § 2.]

72.72.030 Institutional impact account—Reimbursement to political subdivisions. There is hereby created, in the general fund, an institutional impact account which shall be administered by the secretary. The purpose of this fund is to reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein. The secretary shall make such reimbursement to the extent funds are available. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender. [1979 1st ex.s. c 108 § 3.]

72.72.040 Reimbursement—Rules. (1) The secretary shall promulgate rules pursuant to chapter 34.04 RCW regarding the reimbursement process.

(2) Reimbursement shall not be made if otherwise provided pursuant to other provisions of state law. [1979 1st ex.s. c 108 § 4.]

Chapter 72.98 CONSTRUCTION

Sections

72.98.010	Continuation of existing law.
72.98.020	Title, chapter, section headings not part of law.
72.98.030	Invalidity of part of title not to affect remainder.
72.98.040	Repeals and saving.
72.98.050	Bonding acts exempted.
72.98.060	Emergency—1959 c 28.

72.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 28 § 72.98.010.]

72.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 28 § 72.98.020.]

72.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1959 c 28 § 72.98.030.]

72.98.040 Repeals and saving. The following acts or parts of acts are repealed:

(1) Sections 1 through 10, pages 4 through 6, Laws of 1861;

(2) Sections 1 through 5, pages 356 and 357, Laws of 1869;

(3) Sections 1 through 9, pages 358 through 360, Laws of 1869;

(4) Sections 1 through 26, pages 83 through 89, Laws of 1875;

(5) Sections 2247 through 2275, Code 1881;

(6) Sections 1 through 6, pages 37 through 38, Laws of 1883;

(7) Sections 1 through 23, pages 82 through 85, Laws of 1883;

(8) Sections 1 through 15, pages 141 through 144, Laws of 1885–6;

(9) Sections 1 through 7, pages 144 through 145, Laws of 1885–6;

(10) Sections 1 through 18, pages 152 through 155, Laws of 1885–6;

(11) Chapter 60, Laws of 1888;

(12) Chapter 62, Laws of 1888;

(13) Sections 1 through 7, pages 269 through 271, Laws of 1889–90;

(14) Sections 1 through 25, pages 271 through 277, Laws of 1889–90;

(15) Sections 1 through 49, pages 482 through 495, Laws of 1889–90;

(16) Chapter 147, Laws of 1891;

(17) Chapter 131, Laws of 1895;

(18) Chapter 67, Laws of 1897;

(19) Chapter 119, Laws of 1901;

(20) Chapter 167, Laws of 1901;

(21) Chapter 171, Laws of 1901;

(22) Chapter 110, Laws of 1903;

(23) Chapter 90, Laws of 1907;

(24) Chapter 156, Laws of 1907;

(25) Chapter 166, Laws of 1907;

(26) Sections 1, 2 and 4 through 7, chapter 97, pages 256 through 258, Laws of 1909;

(27) Sections 1 through 10, chapter 97, pages 258 through 260, Laws of 1909;

(28) Chapter 222, Laws of 1909;

(29) Section 32, chapter 249, Laws of 1909;

(30) Chapter 10, Laws of 1913;

(31) Sections 1 through 5 and 8 through 14, chapter 157, Laws of 1913;

(32) Chapter 81, Laws of 1915;

(33) Chapter 106, Laws of 1915;

(34) Sections 32, 41 and 43, chapter 7, Laws of 1921;

(35) Chapter 48, Laws of 1921;

(36) Chapter 74, Laws of 1925, extraordinary session;

(37) Chapter 212, Laws of 1927;

(38) Chapter 276, Laws of 1927;

(39) Chapter 305, Laws of 1927;

(40) Chapter 59, Laws of 1929;

(41) Chapter 77, Laws of 1931;

(42) Chapter 84, Laws of 1935;

(43) Section 5, chapter 114, Laws of 1935;

(44) Chapter 161, Laws of 1939;

(45) Chapter 175, Laws of 1943;

(46) Chapter 79, Laws of 1945;

(47) Chapter 188, Laws of 1947;

(48) Chapter 190, Laws of 1947;

(49) Chapter 211, Laws of 1947;

(50) Chapter 114, Laws of 1949;

(51) Sections 20 and 52, chapter 198, Laws of 1949;

(52) Chapter 135, Laws of 1951;

(53) Sections 6 through 16, 40 through 50 and 65 through 69, chapter 139, Laws of 1951;

(54) Chapter 234, Laws of 1951;

(55) Chapter 217, Laws of 1953;

(56) Chapter 232, Laws of 1953;

(57) Chapter 77, Laws of 1955;

(58) Chapter 94, Laws of 1955;

(59) Chapter 104, Laws of 1955;

(60) Chapter 128, Laws of 1955;

(61) Chapter 136, Laws of 1955;

(62) Chapter 195, Laws of 1955;

(63) Chapter 230, Laws of 1955;

(64) Chapter 240, Laws of 1955;

(65) Chapter 242, Laws of 1955;

(66) Chapter 245, Laws of 1955;

(67) Chapter 247, Laws of 1955;

(68) Chapter 248, Laws of 1955;

(69) Chapter 260, Laws of 1955;

- (70) Chapter 314, Laws of 1955;
- (71) Chapter 318, Laws of 1955;
- (72) Chapter 19, Laws of 1957;
- (73) Chapter 21, Laws of 1957;
- (74) Chapter 25, Laws of 1957;
- (75) Chapter 27, Laws of 1957;
- (76) Chapter 29, Laws of 1957;
- (77) Chapter 30, Laws of 1957;
- (78) Chapter 54, Laws of 1957;
- (79) Chapter 61, Laws of 1957;
- (80) Chapter 102, Laws of 1957;
- (81) Section 5, chapter 115, Laws of 1957;
- (82) Chapter 136, Laws of 1957;
- (83) Chapter 188, Laws of 1957;
- (84) Chapter 217, Laws of 1957;
- (85) Chapter 225, Laws of 1957;
- (86) Chapter 272, Laws of 1957;
- (87) Sections 2 and 3, chapter 297, Laws of 1957.

Such repeals shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder, nor the term of office or appointment or employment of any person appointed or employed thereunder. [1959 c 28 § 72.98.040.]

72.98.050 Bonding acts exempted. This act shall not repeal nor otherwise affect the provisions of the institutional bonding acts (chapter 230, Laws of 1949 and chapters 298 and 299, Laws of 1957). [1959 c 28 § 72.98.050.]

Bond acts: Chapter 72.99 RCW.

72.98.060 Emergency—1959 c 28. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately, with the exception of RCW 72.01.280 the effective date of which section is July 1, 1959. [1959 c 28 § 72.98.060.]

Chapter 72.99 BOND ACTS

Sections

STATE BUILDING CONSTRUCTION ACT

72.99.070	Short title.
72.99.080	Definitions.
72.99.090	Contracts for construction authorized—Cost limited.
72.99.100	Limited obligation bonds—Form, term, sale, payment, legal investment, etc.
72.99.110	Deposit of proceeds from bond sale—Appropriation.
72.99.120	State building construction bond redemption fund—Purpose, deposits—Priority as to sales tax revenue.
72.99.130	Bonds not a general obligation—Legislature may provide additional means for payment.
72.99.140	Certain projects authorized.
72.99.150	Acceptance of grants.
72.99.160	Provisions additional to other laws—Liberal construction.

GENERAL OBLIGATION BOND ACT—1957

72.99.200 Institutional building bond redemption fund—Purpose, deposits—Priority as to sales tax revenue—Enforcement.

Reviser's note: The bond acts codified herein as RCW 72.99.070 through 72.99.160 and 72.99.200 were not included in the 1959 reenactment of Title 72 RCW (chapter 28, Laws of 1959). Although not so reenacted, their provisions were expressly saved, see RCW 72.98.050.

STATE BUILDING CONSTRUCTION ACT

72.99.070 Short title. RCW 72.99.070 through 72.99.160 shall be known as the state building construction act. [1957 c 298 § 1.]

Severability—1957 c 298: "If any part of this act shall be held unconstitutional, such invalidity shall not affect any other part. It is hereby declared that had any section, paragraph, sentence, clause, phrase, or word as to which this act is declared invalid been eliminated from the act at the time the same was considered, the act would have nevertheless been enacted with such portions eliminated." [1957 c 298 § 11.] This applies to RCW 72.99.070 through 72.99.160.

72.99.080 Definitions. The following terms, whenever used or referred to in RCW 72.99.070 through 72.99.160, shall have the following meanings, excepting in those instances where the context clearly indicates otherwise:

(1) "Agency" shall mean any board, commission, committee, director, or other agency charged with the supervision and control of any department, institution, or agency of the state of Washington.

(2) "Fund" shall mean the special fund created by RCW 72.99.070 through 72.99.160 to be known as the state building construction bond retirement fund.

(3) "Bonds" shall mean the limited obligation bonds issued pursuant to RCW 72.99.070 through 72.99.160 and payable only out of the special fund created herein.

(4) "Project" shall mean the construction, completion, reconstruction, remodeling, rehabilitation, or improvement of any building or other facility and the acquisition of land therefor authorized by the legislature to be financed under the provisions of RCW 72.99.070 through 72.99.160. [1957 c 298 § 2.]

72.99.090 Contracts for construction authorized—Cost limited. The agencies in RCW 72.99.070 through 72.99.160 mentioned are each empowered to contract for the construction of the particular project herein authorized by the legislature to be constructed and financed as in RCW 72.99.070 through 72.99.160 provided. The cost of each of the projects herein authorized shall not exceed the amounts set forth in RCW 72.99.070 through 72.99.160. [1957 c 298 § 3.]

72.99.100 Limited obligation bonds—Form, term, sale, payment, legal investment, etc. For the purpose of providing means for paying the costs of the projects authorized by RCW 72.99.070 through 72.99.160, and to pay costs incident to the issuance and sale of bonds by RCW 72.99.070 through 72.99.160, the state finance committee is authorized to issue and sell limited obligation bonds of the state of Washington. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee.

The state finance committee may, in its discretion, provide for the issuance of said bonds to be dated, issued and sold from time to time in such amounts as may be necessary to make the payments provided for by RCW 72.99.070 through 72.99.160. Said bonds:

- (1) Shall be
 - (a) Either registered or in coupon form; and
 - (b) Issued in denominations of not less than one hundred dollars;
- (2) Shall state
 - (a) The date of issue; and
 - (b) The series of the issue and be consecutively numbered within the series; and
 - (c) That the bond is payable out of the special fund established for the purposes of RCW 72.99.070 through 72.99.160;
- (3) Shall bear interest, payable either annually or semiannually, as the state finance committee may determine, at a rate not to exceed six percent per annum;
- (4) Shall be payable solely out of the special fund created for the purposes of RCW 72.99.070 through 72.99.160;
- (5) Shall be payable at such times over a period of not to exceed thirty years from date of issuance, in such manner and at such place or places, and with such reserved rights of prior redemption, as the state finance committee may prescribe to be specified therein;
- (6) Shall be signed either manually or with a printed facsimile signature by the governor and the state auditor under the seal of the state and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile.

Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York, as to principal alone or as to both principal and interest under such regulations as the state treasurer may prescribe. Said bonds shall distinctly state that they shall not be a general obligation of the state of Washington, but shall be payable from that portion of the retail sales tax allocated to said fund in the manner prescribed in RCW 72.99.070 through 72.99.160. Said bonds and the interest thereon shall, so long as any portion thereof shall remain unpaid, constitute a prior charge upon the retail sales tax allocated to the state building construction bond redemption fund herein provided for, subject to and inferior only to the charge thereon created by chapters 229 and 230, Laws of 1949 [RCW 28A.47.130–28A.47.180 and 72.99.010–72.99.060], and shall be payable at such places as the state finance committee shall provide. All bonds issued under the provisions of RCW 72.99.070 through 72.99.160 may be sold in such manner and such amounts and at such times and on such terms and conditions as the state finance committee may prescribe: *Provided*, That if such bonds are sold to any persons other than the state of Washington they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provision of RCW 72.99.070 through 72.99.160 shall be legal investment for any of

the funds of the state not restricted by any constitutional prohibition. [1957 c 298 § 4.]

Facsimile signatures: RCW 39.44.100 through 39.44.102.
State finance committee: Chapter 43.33 RCW.

72.99.110 Deposit of proceeds from bond sale—Appropriation. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the state building construction account in the state general fund, and shall be used for the purposes, and by the agencies authorized by RCW 72.99.070 through 72.99.160. For the purpose of carrying out the provision of RCW 72.99.070 through 72.99.160, there is hereby appropriated from the state building construction account the sum of twenty million two hundred and fourteen thousand nine hundred ninety-six dollars, or so much thereof as shall be necessary. [1957 c 298 § 5.]

72.99.120 State building construction bond redemption fund—Purpose, deposits—Priority as to sales tax revenue. There is hereby created in the state treasury a special fund to be known as the state building construction bond redemption fund, which fund shall be exclusively devoted for the retirement of said bonds upon maturity and the payment of interest as it falls due. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements, and the state treasurer shall thereupon deposit such amount in said state building construction bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections, and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, subject to and inferior only to the charges thereon created by chapters 229 and 230, Laws of 1949 [RCW 28A.47.130–28A.47.180 and 72.99.010–72.99.060]. Said bond redemption fund shall be kept segregated from all moneys in the state treasury and shall, while any of such bonds or interest thereon remains unpaid, be available solely for the payment thereof. As a part of the contract of sale of the bonds herein authorized, the state undertakes to continue to levy and collect a tax on retail sales equal to that portion thereof allocated to said fund as provided in RCW 72.99.070 through 72.99.160, and to place the proceeds thereof in the state building construction bond redemption fund and to make said fund available to meet said payments when due until all bonds and the interest thereon authorized under RCW 72.99.070 through 72.99.160 shall have been paid. [1975 1st ex.s. c 278 § 37; 1957 c 298 § 6.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

72.99.130 Bonds not a general obligation—Legislature may provide additional means for payment. The bonds authorized to be issued pursuant to the provisions of RCW 72.99.070 through 72.99.160 shall not be general obligations of the state of Washington, but shall be

limited obligation bonds payable only from the special fund created for their payment derived from the tax on retail sales as herein provided. The legislature may provide additional means for raising money for the payment of interest and principal of said bonds. RCW 72.99.070 through 72.99.160 shall not be deemed to provide an exclusive method for such payment. The power given to the legislature by this section to provide additional means for raising money is permissive, and shall not in any way be construed as a pledge of the general credit of the state of Washington. [1957 c 298 § 7.]

72.99.140 Certain projects authorized. The legislature hereby authorizes the construction of the following projects to be financed under the provisions of RCW 72.99.070 through 72.99.160:

At the University of Washington:	
Completing Construction of	
Teaching Hospital	\$2,850,000.00
By the Military Department:	
Capital Outlays to Armories.....	\$ 325,000.00
Capital Outlays, Major Repairs and Betterments	\$ 332,640.00
By the Department of Fisheries:	
Capital Outlays, Major Repairs and Betterments	\$ 715,000.00
By the Department of Institutions:	
Purchase of Land and Buildings and Cost of Materials and Equipment for Diagnostic and Treatment Center	\$ 780,100.00
At the Cedar Creek Youth Forestry Camp:	
Construction and Equipment of Dormitory and Administration Building, Dining Hall and One Supervisor's Duplex Cottage and Construction of Site for Forestry Camp	\$ 200,000.00
At Eastern State Hospital:	
Remodel, Repair and Equip Four Ward Buildings	\$ 190,000.00
Remodel and Equip Main Kitchen and Meat Preparation Area	\$ 35,000.00
Additions and Repairs to Existing Irrigation System.....	\$ 16,000.00
For Repairs to existing Paving	\$ 25,000.00
Construction of Incinerator and Paving of Adjacent Area.....	\$ 6,000.00
New Well, including Pump, Piping and Electrical Facilities	\$ 130,000.00

At Green Hill School:	
Construction and Equipment of Two Cottage Dormitories	\$ 277,600.00
At Lakeland Village:	
Repairs to Buildings and Structures and Renovations and Additions to Plant Utilities	\$ 213,000.00
To Complete the Construction of Douglas Hall.....	\$ 61,000.00
At Maple Lane School:	
Construction and Equipping of One Cottage	\$ 110,000.00
At Northern State Hospital:	
Replace Main Waterline Between Reservoirs.....	\$ 46,000.00
Repairs to Administration and Ward Buildings	\$ 50,000.00
Construct Covering for Walks	\$ 30,000.00
Construction of Emergency Exits for Four Ward Buildings	\$ 6,750.00
At Washington State Penitentiary:	
Construction and Equipping of Admission and Security Center	\$1,900,000.00
Construction and Equipping of Addition to Industries and Maintenance Building.....	\$ 150,000.00
Remodel and Repair Seven-wing Locking Devices.....	\$ 65,000.00
Construction and Equipping of Vocational Shop Building.....	\$ 225,000.00
Purchase and Installation of Shop Equipment	\$ 45,000.00
Purchase and Install Industrial Equipment.....	\$ 200,000.00
Construction of Two Additional Bays to Present Industrial Building	\$ 80,000.00
Remodel and Expand Electric Transmission System.....	\$ 47,500.00
At Rainier State School:	
Extend and Equip Laundry	\$ 173,000.00
(Construction to be supervised by Department of General Administration Architect.)	
Remodel, Extend and Equip Kitchen	\$ 162,000.00
(Construction to be supervised by Department of General Administration Architect.)	

Remodel Halls to Provide Classrooms, Including Equipment and Services	\$ 45,000.00
(Construction to be supervised by Department of General Administration Architect.)	
Construct and Equip Addition to Maintenance Shops	\$ 13,300.00
Modify Storm Sewer System.....	\$ 35,000.00
At Washington State Reformatory:	
Construct and Furnish One Personnel Housing Unit	\$ 25,000.00
Remodel and Repair Existing Buildings, Including Equipment.....	\$ 100,000.00
Purchase and Installation of Equipment for New Industries.....	\$ 50,000.00
At State Soldiers' Home:	
Remodeling and Equipping Old Hospital	\$ 80,000.00
At Western State Hospital:	
Construction of New Juvenile Building	\$ 472,500.00
(Plans and Supervision Furnished by Department of General Administration.)	
At State College of Washington:	
Construction of Veterinary Clinic	\$1,316,750.00
Construction of Poultry and Dairy Buildings.....	\$ 600,000.00
Construction of Incinerator	\$ 150,000.00
Construction of Swine Barn for Animal Husbandry	\$ 44,000.00
Partial Construction of Plant Science Building.....	\$1,900,000.00
Complete the Construction and Equipment of Agronomy Seed House	\$ 68,400.00
Purchase of Ninety Acres Agricultural Land.....	\$ 27,000.00
Agricultural land—Skagit	\$ 34,000.00
Pullman Land Enclosed by Campus	\$ 110,000.00
At Central Washington College:	
Completion of Classroom Building.....	\$ 36,000.00
Improvements to Present Campus Area	\$ 26,200.00

Conversion of Coal Burner to Natural Gas	\$ 16,000.00
Purchase and Installation of Closed Circuit Television	\$ 49,336.00
Purchase of Land	\$ 181,620.00
Extension of Utilities	\$ 15,000.00
Construction of Health and Physical Education Building	\$1,300,000.00
Site Development for Above Building and Outdoor Physical Education Facilities	\$ 125,500.00
At Eastern Washington College:	
Capital Outlays, Major Repairs and Betterments, Including Maintenance Sheds	\$ 275,000.00
Construction and Equipment and Purchase of Land for Laboratory School	\$ 422,000.00
At Western Washington College:	
Repairs to Buildings and Structures	\$ 25,000.00
Purchase of Land and Site Improvements	\$ 131,600.00
Construction and Equipment of Science Building	\$2,216,800.00
At the School for the Blind at Vancouver:	
Construction of and Equipment for New School Building.....	\$ 520,500.00

[1957 c 298 § 8.]

72.99.150 Acceptance of grants. In addition to the power and authority conferred by RCW 72.99.070 through 72.99.160, any agency authorized to construct the projects herein authorized shall have the authority and power to accept grants from the United States government, or any federal or state agency or instrumentality, or any public or private corporation, association, or person to aid in defraying the costs of any such project, which grant may be utilized in addition to the specific authorization of funds herein provided in the completion of such project. [1957 c 298 § 9.]

72.99.160 Provisions additional to other laws—
Liberal construction. RCW 72.99.070 through 72.99.160 shall be deemed to provide an additional and alternative method for the doing of the things authorized herein and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing. RCW 72.99.070 through 72.99.160 being necessary for the welfare of the state of Washington and its inhabitants shall be liberally construed to effect the purposes thereof. Any section or provision of RCW 72.99.070 through 72.99.160 which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling

this state to receive federal funds, or otherwise participate in programs of the federal government or any of its agencies or instrumentalities furthering the purposes of RCW 72.99.070 through 72.99.160. [1957 c 298 § 10.]

GENERAL OBLIGATION BOND ACT—1957

72.99.200 Institutional building bond redemption fund—Purpose, deposits—Priority as to sales tax revenue—Enforcement. (Effective until July 1, 1980.)

The institutional building bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by *RCW 72.99.170 through 72.99.220. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and the state treasurer shall thereupon deposit such amount in said institutional building bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 38; 1957 c 299 § 4.]

Reviser's note: (1) This section was repealed by 1979 1st ex.s. c 67 § 20, effective July 1, 1980.

* (2) "RCW 72.99.170 through 72.99.220" were repealed by 1979 1st ex.s. c 67 § 18.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Title 73

VETERANS AND VETERANS' AFFAIRS

Chapters

- 73.01** Department of veterans affairs.
- 73.04** General provisions.
- 73.08** Veterans' relief.
- 73.12** Veterans' loan insurance.
- 73.16** Employment and reemployment.
- 73.20** Acknowledgments and powers of attorney.
- 73.24** Burial.
- 73.36** Uniform veterans' guardianship act.

Colony of the state soldiers' home: RCW 72.36.040.
Elections, absentee service voters: Chapter 29.39 RCW.
Estates of absentees: Chapter 11.80 RCW.
Firemen's retirement, credit for military service: RCW 41.16.220, 41.18.150.
Fraternal insurance, veterans' societies: RCW 48.36.310.
Hunting and fishing license, free to certain veterans: RCW 77.32.230.
Liquor control board employment, veteran preference: RCW 66.08.016.
Mental illness hospitalization act: Chapter 71.02 RCW.
Militia and military affairs: Title 38 RCW.
Nuncupative wills: RCW 11.12.020.
Oaths, military personnel, who may administer: RCW 38.38.844.
Police retirement, credit for military service: RCW 41.20.050.
Professional, occupational licenses, moratorium: RCW 43.24.130.
Property taxation exemptions: RCW 84.36.030.
Public employment, veterans' preference in examinations: RCW 41.04.010.
Public institutions of higher education, children of certain citizens missing in action or prisoners of war exempt from tuition—Limitations—Procedure: RCW 28B.10.265.
Soldiers' and veterans' homes: Chapter 72.36 RCW.
State employees' retirement, credit for military service: RCW 41.40.170.
State employees' retirement, exception from membership: RCW 41.40.120(6).
State hospitals for insane, war veterans: RCW 73.36.165.
State-wide city employees' retirement, prior service credit: RCW 41.44.120(4).
Teachers' retirement, credit for military service: RCW 41.32.260.
Veterans' rehabilitation council: Chapter 43.61 RCW.
Vocational-technical schools, children of certain citizens missing in action or prisoners of war exempt from tuition—Limitations—Procedure: RCW 28A.09.200.
Wills, proof when witness in war service: RCW 11.20.040.
Wills, who may make: RCW 11.12.010.

Chapter 73.01

DEPARTMENT OF VETERANS AFFAIRS (See chapter 43.60A RCW)

Chapter 73.04

GENERAL PROVISIONS

Sections

- 73.04.010 Pension papers—Fees not to be charged.
- 73.04.020 Pension papers—Fees not to be charged—Penalty.
- 73.04.030 Recording honorable discharges without charge.
- 73.04.040 Recording honorable discharges without charge—Certified copy as proof.
- 73.04.042 Recording honorable discharge—Veterans of Spanish-American War and World War I.
- 73.04.050 Right to peddle, vend, sell goods without license—License fee on business established under act of congress prohibited.
- 73.04.060 Right to peddle, vend, sell goods without license—Issuance of license.
- 73.04.070 Meeting hall may be furnished veterans' organizations.
- 73.04.080 Meeting place rental may be paid out of county fund.
- 73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control.
- 73.04.100 Credit toward law degree.
- 73.04.110 Free motor vehicle licenses for certain disabled veterans.
- 73.04.120 Certificate stating marital status available free.
- 73.04.130 Director of department of veterans affairs authorized to act as executor, administrator, guardian or federal fiduciary of veteran's estate—Appointment.

Veterans classified as resident students: RCW 28B.15.014.

Vietnam veterans' exemption from tuition and fee increases at institutions of higher education: RCW 28B.15.620.

73.04.010 Pension papers—Fees not to be charged. No judge, or clerk of court, county clerk, county auditor, or any other county officer, shall be allowed to charge any honorably discharged soldier or seaman, or the spouse, orphan, or legal representative thereof, any fee for administering any oath, or giving any official certificate for the procuring of any pension, bounty, or back pay, nor for administering any oath or oaths and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor any fee for services rendered in perfecting any voucher. [1973 1st ex.s. c 154 § 106; 1891 c 14 § 1; RRS § 4232.]

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

73.04.020 Pension papers—Fees not to be charged—Penalty. Any such officer who may require and accept fees for such services shall be deemed guilty of a misdemeanor, and on conviction thereof shall be

fined in any sum not less than ten dollars nor more than fifty dollars. [1891 c 14 § 2; RRS § 4233.]

73.04.030 Recording honorable discharges without charge. Each county auditor of the several counties of the state of Washington shall record upon presentation without expense, in a suitable permanent record the honorable discharge of any veteran who was a resident of the county, at the time of his enlistment or induction into the armed forces of the United States. [1943 c 38 § 1; Rem. Supp. 1943 § 10758-10. FORMER PART OF SECTION: 1923 c 17 § 1 now codified as RCW 73.04.042.]

73.04.040 Recording honorable discharges without charge—Certified copy as proof. A certified copy of such record shall be prima facie proof for all purposes of the services rendered, citizenship, place and date of birth of such veteran. [1943 c 38 § 2; Rem. Supp. 1943 § 10758-11.]

73.04.042 Recording honorable discharge—Veterans of Spanish-American War and World War I. It shall be the duty of county auditors to record without charge, in a book kept for that purpose, the certificate of discharge of any honorably discharged soldier, sailor or marine who served with the United States forces in the war with Germany and her allies and veterans of the Spanish-American War. [1923 c 17 § 1; 1919 c 86 § 1; RRS § 4094-1. Formerly RCW 73.04.030, part.]

73.04.050 Right to peddle, vend, sell goods without license—License fee on business established under act of congress prohibited. Every honorably discharged soldier, sailor or marine of the military or naval service of the United States, who is a resident of this state, shall have the right to peddle, hawk, vend and sell goods, other than his own manufacture and production, without paying for the license as now provided by law, by those who engage in such business; but any such soldier, sailor or marine may engage in such business by procuring a license for that purpose as provided in RCW 73.04.060.

No county, city or political subdivision in this state shall charge or collect any license fee on any business established by any veteran under the provisions of Public Law 346 of the 78th congress. [1945 c 144 § 9; 1903 c 69 § 1; Rem. Supp. 1945 § 10755. Formerly RCW 73.04.050, part and 73.04.060. FORMER PART OF SECTION: 1945 c 144 § 10 now codified as RCW 73.04.060.]

Reviser's note: 1945 c 144 §§ 9 and 10 amending 1903 c 69 §§ 1 and 2 were declared unconstitutional in *Larsen v. City of Shelton*, 37 Wn. (2d) 481.

Peddlers' and hawkers' licenses: Chapter 36.71 RCW.

73.04.060 Right to peddle, vend, sell goods without license—Issuance of license. On presentation to the county auditor or city clerk of the county in which any such soldier, sailor or marine may reside, of a certificate of honorable discharge from the army or naval service of the United States, such county auditor or city clerk, as the case may be, shall issue without cost to such soldier,

sailor or marine, a license authorizing him to carry on the business of peddler, as provided in RCW 73.04.050. [1945 c 144 § 10; 1903 c 69 § 2; Rem. Supp. 1945 § 10756. Formerly RCW 73.04.050, part. FORMER PART OF SECTION: 1945 c 144 § 9, part now codified in RCW 73.04.050.]

Reviser's note: 1945 c 144 § 10 amending 1903 c 69 § 2 declared unconstitutional, see note following RCW 73.04.050.

73.04.070 Meeting hall may be furnished veterans' organizations. Counties, cities and other political subdivisions of the state of Washington are authorized to furnish free of charge a building, office and/or meeting hall for the exclusive use of the several nationally recognized veterans' organizations and their auxiliaries, subject to the direction of the committee or person in charge of such building, office and/or meeting hall. The several nationally recognized veterans' organizations shall have access at all times to said building, office and/or meeting hall. Counties, cities and other political subdivisions shall further have the right to furnish heat, light, utilities, furniture and janitor service at no cost to the veterans' organizations and their auxiliaries. [1945 c 108 § 1; Rem. Supp. 1945 § 10758-60.]

73.04.080 Meeting place rental may be paid out of county fund. Any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress which has qualified to accept relief from the indigent soldiers' relief fund of any county may draw upon said county fund for the payment of the rent of its regular meeting place: *Provided*, That no post, camp or chapter shall be allowed to draw on such fund for this purpose to exceed the sum of one hundred eighty dollars in any one year, or in any amount for hall rental where said post, camp or chapter is furnished quarters by the state or by any municipality.

Before such claims are ordered paid by the county commissioners, the commander of such posts, camps or chapters shall file a proper claim each month with the county auditor for such rental. [1947 c 180 § 7; 1945 c 144 § 8; 1921 c 41 § 8; 1915 c 69 § 1; 1909 c 64 § 1; Rem. Supp. 1947 § 10743.]

73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control. All benefits, advantages or emoluments, not available upon equal terms to all citizens, including but not being limited to preferred rights to public employment, civil service preference, exemption from license fees or other impositions, preference in purchasing state property and special pension or retirement rights, which by any law of this state have been made specially available to war veterans or to persons who have served in the armed forces or defense forces of the United States, shall be available only to persons who have been subject to full and continuous military control and discipline as actual members of the federal armed forces. Service with such forces in a civilian capacity, or in any capacity wherein a person retained the right to terminate his service or to refuse full obedience to military superiors, shall not be the basis for eligibility for such benefits.

Service in any of the following shall not for purposes of this section be considered as military service: The office of emergency services or any component thereof; the American Red Cross; the United States Coast Guard Auxiliary; United States Coast Guard Reserve Temporary; United States Coast and Geodetic Survey; American Field Service; Civil Air Patrol; Cadet Nurse Corps, and any other similar organization. [1974 ex.s. c 171 § 45; 1947 c 142 § 1; Rem. Supp. 1947 § 10758-115.]

73.04.100 Credit toward law degree. Any person who has served in any branch of the armed forces of the United States and who is enrolled or who hereafter enrolls as a student in any law school in the state of Washington, shall be given credit for two school quarters of work on his law course, by reason of such service, toward his law degree: *Provided*, That such service shall have been for a period of at least one year prior to September 1, 1945. [1947 c 252 § 1; Rem. Supp. 1947 § 10758-110.]

73.04.110 Free motor vehicle licenses for certain disabled veterans. Any veteran who is a veteran of any war of the United States, or of any military campaign for which a campaign ribbon shall have been awarded, who shall submit to the director of licensing satisfactory proof that he has lost the use of one or both of his arms or legs or that he had become blind in both eyes as the result of his military service in such war or military campaign, shall be entitled to have issued to him by the director of licensing an annual motor vehicle license for one automobile without the payment of any license fee or excise tax thereon.

For the purposes of this section, "blind" shall mean that definition of "blind" utilized by the state of Washington in determining eligibility for financial assistance to the blind under Title 74 RCW. [1979 c 158 § 221; 1972 ex.s. c 60 § 1; 1971 ex.s. c 193 § 1; 1951 c 206 § 1; 1949 c 178 § 1; Rem. Supp. 1949 § 6360-50-1.]

73.04.120 Certificate stating marital status available free. County clerks and county auditors, respectively, are authorized and directed to furnish free of charge to the legal representative, surviving spouse, child or parent of any deceased veteran certified copies of marriage certificates, decrees of divorce or annulment, or other documents contained in their files affecting the marital status of such veteran whenever any such document shall be required in connection with any claim pending before the United States veterans' bureau or other governmental agency administering benefits to war veterans. Where these same documents are required of service personnel of the armed forces of the United States for determining entitlement to family allowances and other benefits, they shall be provided without charge by county clerks and county auditors upon request of the person in the service or his dependents. [1967 c 89 § 1; 1949 c 16 § 1; Rem. Supp. 1949 § 10758-13b.]

73.04.130 Director of department of veterans affairs authorized to act as executor, administrator, guardian or

federal fiduciary of veteran's estate—Appointment. The director of the department of veterans affairs or his designee is authorized to act as executor under the last will, or as administrator of the estate of any deceased veteran, or as the guardian or duly appointed federal fiduciary of the estate of any insane or incompetent veteran, or as guardian or duly appointed federal fiduciary of the estate of any person who is a bona fide resident of the state of Washington and who is certified by the veterans' administration as having money due from the veterans' administration, the payment of which is dependent upon the appointment of a guardian or other type fiduciary. No fee shall be allowed or paid to the director or his designee for acting as executor, administrator, guardian or fiduciary, or to any attorney for the director or his designee.

The director or his designee, or any other interested person may petition the appropriate court for the appointment of the director or his designee. Any such petition by the director or his designee shall be without cost and without fee. If appointed, the director or his designee may serve without bond. This section shall not affect the prior right to act as administrator of a veterans' estate of such persons as are denominated in RCW 11.28.120 (1) and (2), nor shall this section affect the appointment of executor made in the last will of any veteran, nor shall this section apply to estates larger than fifteen thousand dollars. [1979 c 64 § 1; 1977 c 31 § 3; 1974 ex.s. c 63 § 1; 1972 ex.s. c 4 § 1.]

Chapter 73.08

VETERANS' RELIEF

Sections	
73.08.010	County aid to indigent veterans and families— Procedure.
73.08.030	Procedure where no veterans' organization in precinct.
73.08.040	Notice of intention to furnish relief—Annual statement.
73.08.050	Performance bond may be required.
73.08.060	Restrictions on sending veterans or families to alms- houses, etc.
73.08.070	County burial of indigent deceased veterans.
73.08.080	Tax levy authorized.

Soldiers' and veterans' homes: Chapter 72.36 RCW.

Soldiers' home: State Constitution Art. 10 § 3.

73.08.010 County aid to indigent veterans and families—Procedure. For the relief of indigent and suffering Union soldiers, sailors and marines who served in the Civil War, in the war of Mexico or in any of the Indian wars in the United States, the Spanish-American war and Philippine insurrection, soldiers, sailors and marines who served in the United States army, navy, or marine corps between April 6, 1917, and the date upon which peace is finally concluded with the German government and its allies, or soldiers, sailors and marines who served in the army, navy or marine corps of the United States in any other foreign war, insurrection, or expedition, which service shall be governed by the issuance of a campaign badge by the government of the United States of America, or for any members of the armed forces of

the United States in the existing war between the United States and Japan and her allies, or the existing war between the United States and Germany and her allies, and their families or the families of those deceased, who need assistance in any city, town or precinct in this state; the board of commissioners of the county in which said city, town or precinct is situated shall provide such sum or sums of money as may be necessary, to be drawn upon by the commander and quartermaster, or commander and adjutant of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress in said city or town upon recommendation of the relief committee of said post, camp or chapter: *Provided*, Said soldier, sailor or marine, or the families of those deceased are and have been residents of the state for at least twelve months, and the orders of said commander and quartermaster, or commander and adjutant shall be the proper voucher for the expenditure of said sum or sums of money. [1947 c 180 § 1; 1945 c 144 § 1; 1921 c 41 § 1; 1919 c 83 § 1; 1907 c 64 § 1; 1893 c 37 § 1; 1888 p 208 § 1; Rem. Supp. 1947 § 10737. Cf. 1935 c 38 § 1.]

Soldiers' home and colony: Chapter 72.36 RCW.

Veterans' rehabilitation council: Chapter 43.61 RCW.

Washington veterans' home: Chapter 72.36 RCW.

73.08.030 Procedure where no veterans' organization in precinct. If there be no post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress, in any precinct in which it should be granted, the county commissioners of the county in which said precinct is, may accept and pay the orders drawn, as hereinbefore provided by the commander and quartermaster, or commander and adjutant, of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress, located in the nearest city or town, upon the recommendation of a relief committee who shall be residents of the said precinct in which the relief may be furnished. [1947 c 180 § 2; 1945 c 144 § 2; 1921 c 41 § 2; 1907 c 64 § 2; 1888 p 208 § 2; Rem. Supp. 1947 § 10738.]

73.08.040 Notice of intention to furnish relief—Annual statement. *Upon the passage of this act the commander of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress which shall undertake the relief of indigent veterans and their families, as hereinbefore provided, before the acts of said commander and quartermaster, or commander and adjutant may become operative in any city or precinct, shall file with the county auditor of such county, notice that said post, camp or chapter intends to undertake such relief as is provided by this chapter. Such notice shall contain the names of the relief committee of said post, camp or chapter in such city or precinct, and the commander of said post, camp or chapter shall annually thereafter during the month of October file a similar notice with said auditor, and also a detailed statement of the amount of relief furnished during the preceding year, with the names of all persons to whom such relief shall have been

furnished, together with a brief statement in each case from the relief committee upon whose recommendations the orders were drawn. [1947 c 180 § 3; 1945 c 144 § 3; 1921 c 41 § 3; 1907 c 64 § 3; 1888 p 209 § 3; Rem. Supp. 1947 § 10739.]

*Reviser's note: The language "Upon the passage of this act" first appears in 1888 p 209 § 3.

73.08.050 Performance bond may be required. The county commissioners may require of the commander and quartermaster, or commander and adjutant, of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress undertaking to distribute relief under this chapter a bond with sufficient and satisfactory sureties for the faithful and honest discharge of their duties under this chapter. [1947 c 180 § 4; 1945 c 144 § 4; 1921 c 41 § 4; 1907 c 64 § 4; 1888 p 209 § 4; Rem. Supp. 1947 § 10740.]

73.08.060 Restrictions on sending veterans or families to almshouses, etc. County commissioners are hereby prohibited from sending indigent Union, Spanish-American war soldiers, sailors and marines, soldiers, sailors and marines who have served the United States in the United States army, navy, or marine corps between April 6, 1917, and the date upon which peace is finally concluded with the German government and its allies, or soldiers, sailors and marines who served in the army, navy, or marine corps of the United States in any other foreign war, insurrection or expedition, which service shall be governed by the issuance of a campaign badge by the government of the United States of America, or any members of the armed forces of the United States in the existing war between the United States and Germany and her allies or the existing war between the United States and Japan and her allies (or their families or the families of the deceased), of the classes of persons mentioned in RCW 73.08.010, to any almshouse (or orphan asylum) without the concurrence and consent of the commander and relief committee of the post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress as provided in RCW 73.08.010 and 73.08.030. Indigent veterans shall, whenever practicable, be provided for and relieved at their homes in such city, town or precinct in which they shall have a residence, in the manner provided in RCW 73.08.010 and 73.08.030. Indigent or disabled veterans of the classes specified in RCW 73.08.010, who are not insane and have no families or friends with whom they may be domiciled, may be sent to any soldiers' home. [1947 c 180 § 5; 1945 c 144 § 5; 1919 c 83 § 5; 1907 c 64 § 5; 1888 p 209 § 5; Rem. Supp. 1947 § 10741.]

73.08.070 County burial of indigent deceased veterans. It shall be the duty of the board of county commissioners in each of the counties in this state to designate some proper authority other than the one designated by law for the care of paupers and the custody of criminals who shall cause to be interred at the expense of the county the body of any honorably discharged soldier,

sailor or marine who served in the army or the navy of the United States of America during the late Civil War or in the war with Mexico or in any of the Indian wars that occurred in the state of Washington, or the Spanish-American war and the Philippine insurrection, soldiers, sailors and marines who served in the United States army, navy or marine corps between April 6, 1917, and the date upon which peace is finally concluded with the German government and its allies, or soldiers, sailors and marines who served in the army, navy or marine corps of the United States in any other foreign war, insurrection or expedition which service shall be governed by the issuance of a campaign badge by the government of the United States of America, or any member of the armed forces of the United States in the existing war between the United States and Germany and her allies or the existing war between the United States and Japan and her allies, and the wives, husbands, minor children, widows or widowers of such soldiers, sailors or marines, who shall hereafter die without leaving means sufficient to defray funeral expenses; and when requested so to do by the commanding officer of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress or the relief committee of any such posts, camps or chapters: *Provided, however*, That such interment shall not cost more than one hundred eighty dollars. If the deceased has relatives or friends who desire to conduct the burial of such deceased person, then upon request of said commander or relief committee a sum not to exceed one hundred eighty dollars shall be paid to said relatives or friends by the county treasurer, upon due proof of the death and burial of any person provided for by this section and proof of expenses incurred. [1949 c 15 § 1; 1947 c 180 § 6; 1945 c 144 § 6; 1921 c 41 § 6; 1919 c 83 § 6; 1917 c 42 § 1; 1907 c 64 § 6; 1899 c 99 § 1; 1888 p 209 § 6; Rem. Supp. 1949 § 10757. Formerly RCW 73.24.010.]

Counties, disposal of remains of indigent persons: RCW 36.39.030.

73.08.080 Tax levy authorized. The boards of county commissioners of the several counties in this state shall levy, in addition to the taxes now levied by law, a tax in a sum equal to the amount which would be raised by not less than one and one-eighth cents per thousand dollars of assessed value, and not greater than twenty-seven cents per thousand dollars of assessed value against the taxable property of their respective counties, to be levied and collected as now prescribed by law for the assessment and collection of taxes, for the purpose of creating the veteran's relief fund for the relief of honorably discharged veterans who served in the armed forces of the United States in the Civil War, in the war of Mexico or in any of the Indian wars, or the Spanish-American war or the Philippine insurrection, in the First World War, or Second World War or Korean conflict, or Viet Nam conflict, and the indigent wives, husbands, widows, widowers and minor children of such indigent or deceased veterans, to be disbursed for such relief by such board of county commissioners: *Provided*, That if the funds on

deposit, less outstanding warrants, residing in the veteran's relief fund on the first Tuesday in September exceed the expected yield of one and one-eighth cents per thousand dollars of assessed value against the taxable property of the county, the county commissioners may levy a lesser amount: *Provided further*, That the costs incurred in the administration of said veteran's relief fund shall be computed by the county treasurer not less than annually and such amount may then be transferred from the veteran's relief fund as herein provided for to the county current expense fund. [1973 2nd ex.s. c 4 § 5; 1973 1st ex.s. c 195 § 86; 1970 ex.s. c 47 § 9; 1969 c 57 § 1; 1945 c 144 § 7; 1921 c 41 § 7; 1919 c 83 § 7; 1907 c 64 § 7; 1893 c 37 § 2; 1888 p 210 § 7; Rem. Supp. 1945 § 10742. Formerly RCW 73.08.020.]

Emergency—Effective dates—1973 2nd ex.s. c 4: See notes following RCW 84.52.043.

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

Chapter 73.12

VETERANS' LOAN INSURANCE

Sections

73.12.010	Statement of purpose.
73.12.030	Veterans' loan insurance fund created.
73.12.040	Veterans' loan insurance reserve fund.
73.12.050	Reserve fund to pay losses—Limitation.
73.12.060	Investment of fund—Expense of loan insurance division.

73.12.010 Statement of purpose. It is the intention of the legislature by this chapter to partially discharge the obligation of the state of Washington to those of its citizens who are serving, or who shall have served, in the army, navy, marine corps or coast guard, during World War II, by creating in the *department of finance, budget and business the division of veterans' loan insurance and authorizing the director through said division to guarantee, to the extent provided in this chapter, loans made to such citizens by state banks and savings and loan associations, in conjunction with loan guarantees made by the federal government under Public Law No. 346, or as the same may be hereafter amended, being chapter 268 of the second session of the 78th congress, in order that such citizens may more readily obtain loans for their economic rehabilitation and readjustment to civilian life. [1945 c 217 § 1; Rem. Supp. 1945 § 10758–80.]

***Reviser's note:** Powers and duties of the *department of finance, budget and business* have devolved upon the department of general administration, see 1955 c 285 §§ 4, 14, 16 and 18 (RCW 43.19.010 and 43.19.015).

73.12.030 Veterans' loan insurance fund created. There is hereby created in the division of veterans' loan insurance the veterans' loan insurance fund. [1945 c 217 § 4; Rem. Supp. 1945 § 10758–83.]

73.12.040 Veterans' loan insurance reserve fund. From the veterans' loan insurance fund and from any loan insurance premiums paid to the division of veterans' loan insurance by any borrowers or lenders qualified to

borrow or lend under the terms of this chapter, the *director of finance, budget and business shall create the veterans' loan insurance reserve fund which shall constitute the sole fund from which there may be paid any losses accruing to any state bank or savings and loan association from any loans guaranteed under the provisions of this chapter. [1945 c 217 § 5; Rem. Supp. 1945 § 10758-84.]

*Reviser's note: Powers and duties of the "director of finance, budget and business" have devolved on the director of general administration, see note following RCW 73.12.010.

73.12.050 Reserve fund to pay losses—Limitation. The director shall have authority to pay out of the veterans' loan insurance reserve fund such losses as may result from any loans guaranteed under the provisions of this chapter to the extent of such guarantee: *Provided*, That the aggregate liability of the veterans' loan insurance reserve fund for all such losses shall never exceed the total amount in said reserve fund. [1945 c 217 § 6; Rem. Supp. 1945 § 10758-85.]

73.12.060 Investment of fund—Expense of loan insurance division. All money in the veterans' loan insurance fund and all money in the veterans' loan insurance reserve fund shall be invested by the state finance committee and all expenses of the veterans' loan insurance division shall be paid by the director from the income from said investments, which expenses the director is hereby authorized to incur and pay. [1945 c 217 § 7; Rem. Supp. 1945 § 10758.]

Chapter 73.16

EMPLOYMENT AND REEMPLOYMENT

Sections

73.16.010	Preference in public employment.
73.16.015	Enforcement of preference—Civil action.
73.16.020	Penalty for failure to comply.
73.16.031	Reemployment—Definitions.
73.16.033	Reemployment of returned veterans and others.
73.16.035	Eligibility requirements.
73.16.041	Leaves of absence of elective and judicial officers.
73.16.051	Restoration without loss of seniority or benefits.
73.16.061	Enforcement of provisions.
73.16.070	Federal act to apply in state courts.

73.16.010 Preference in public employment. In every public department, and upon all public works of the state, and of any county thereof, honorably discharged soldiers, sailors, and marines who are veterans of any war of the United States, or of any military campaign for which a campaign ribbon shall have been awarded, and their widows or widowers, shall be preferred for appointment and employment. Age, loss of limb, or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the capacity necessary to discharge the duties of the position involved: *Provided*, That spouses of honorably discharged veterans who have a service connected permanent and total disability shall also be preferred for appointment and employment. [1975 1st ex.s. c 198 § 1; 1973 1st ex.s. c 154 § 107; 1951 c 29 § 1; 1943 c 141 §

1; 1919 c 26 § 1; 1915 c 129 § 1; 1895 c 84 § 1; Rem. Supp. 1943 § 10753.]

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

Veterans to receive preference status in competitive examinations for public employment: RCW 41.04.010.

73.16.015 Enforcement of preference—Civil action. Any veteran entitled to the benefits of RCW 73.16.010 may enforce his rights hereunder by civil action in the courts. [1951 c 29 § 2.]

73.16.020 Penalty for failure to comply. All officials or other persons having power to appoint to or employment in the public service set forth in RCW 73.16.010, are charged with a faithful compliance with its terms, both in letter and in spirit, and a failure therein shall be a misdemeanor, and on conviction shall be punished by a fine of not less than five dollars nor more than twenty-five dollars. [1895 c 84 § 2; RRS § 10754.]

73.16.031 Reemployment—Definitions. As used in RCW 73.16.031 through 73.16.061, the term:

"Resident" means any person residing in the state.

"Position of employment" means any position (other than temporary) wherein a person is engaged for a private employer, company, corporation, state, municipality, or political subdivision thereof.

"Temporary position" means a position of short duration which, after being vacated, ceases to exist and wherein the employee has been advised as to its temporary nature prior to his engagement.

"Employer" means the person, firm, corporation, state and any political subdivision thereof, or public official currently having control over the position which has been vacated.

"Rejectee" means a person rejected because he is not, physically or otherwise, qualified to enter the service. [1953 c 212 § 1.]

Employment and reemployment rights of members of organized militia upon return from active duty: RCW 38.24.060.

73.16.033 Reemployment of returned veterans and others. Any person who is a resident of this state and who voluntarily or upon demand, vacates a position of employment to determine his physical fitness to enter, or, who actually does enter upon active duty or training in the Washington National Guard, the armed forces of the United States, or the United States public health service, shall, provided he meets the requirements of RCW 73.16.035, be reemployed forthwith: *Provided*, That the employer need not reemploy such person if circumstances have so changed as to make it impossible, unreasonable, or against the public interest for him to do so: *Provided further*, That this section shall not apply to a temporary position.

If such person is still qualified to perform the duties of his former position, he shall be restored to that position or to a position of like seniority, status and pay. If he is not so qualified as a result of disability sustained during his service, or during the determination of his

fitness for service, but is nevertheless qualified to perform the duties of another position, under the control of the same employer, he shall be reemployed in such other position: *Provided*, That such position shall provide him with like seniority, status, and pay, or the nearest approximation thereto consistent with the circumstances of the case. [1953 c 212 § 2.]

73.16.035 Eligibility requirements. In order to be eligible for the benefits of RCW 73.16.031 through 73.16.061, an applicant must comply with the following requirements:

(1) He must furnish a receipt of an honorable discharge, report of separation, certificate of satisfactory service, or other proof of having satisfactorily completed his service. Rejectees must furnish proof of orders for examination and rejection.

(2) He must make written application to the employer or his representative within ninety days of the date of his separation or release from training and service. Rejectees must apply within thirty days from date of rejection.

(3) If, due to the necessity of hospitalization, while on active duty, he is released or placed on inactive duty and remains hospitalized, he is eligible for the benefits of RCW 73.16.031 through 73.16.061: *Provided*, That such hospitalization does not continue for more than one year from date of such release or inactive status: *Provided further*, That he applies for his former position within ninety days after discharge from such hospitalization.

(4) He must return and reenter the office or position within three months after serving four years or less: *Provided*, That any period of additional service imposed by law, from which one is unable to obtain orders relieving him from active duty, will not affect his reemployment rights. [1969 c 16 § 1; 1953 c 212 § 3.]

73.16.041 Leaves of absence of elective and judicial officers. When any elective officer of this state or any political subdivision thereof, including any judicial officer, shall enter upon active service or training as provided in RCW 73.16.031, 73.16.033 and 73.16.035, the proper officer, board or other agency, which would ordinarily be authorized to grant leave of absence or fill a vacancy created by the death or resignation of the elective official so ordered to such service, shall grant an extended leave of absence to cover the period of such active service or training and may appoint a temporary successor to the position so vacated. No leave of absence provided for herein shall operate to extend the term for which the occupant of any elective position shall have been elected. [1953 c 212 § 4.]

73.16.051 Restoration without loss of seniority or benefits. Any person who is entitled to be restored to a position in accordance with the provisions of RCW 73.16.031, 73.16.033, 73.16.035, and 73.16.041 shall be considered as having been on furlough or leave of absence, from his position of employment, during his period of active military duty or service, and he shall be so restored without loss of seniority. He shall further be entitled to participate in insurance, vacations, retirement pay and other benefits offered by the employer pursuant

to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was ordered into the service; and he shall not be discharged from such position without cause within one year after restoration: *Provided*, That no employer shall be required to make any payment to keep insurance or retirement rights current during such period of military service. [1953 c 212 § 5.]

73.16.061 Enforcement of provisions. In case any employer, his successor or successors fails or refuses to comply with the provisions of RCW 73.16.031 through 73.16.061, the prosecuting attorney of the county in which the employer is located shall bring action in the superior court to obtain an order to specifically require such employer to comply with the provisions hereof, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful act. Any such person who does not desire the services of the prosecuting attorney may, by private counsel, bring such action. [1953 c 212 § 6.]

73.16.070 Federal act to apply in state courts. The soldiers' and sailors' civil relief act of 1940, Public Act No. 861, 76th congress, is hereby specifically declared to apply in proper cases in all the courts of this state. [1941 c 201 § 5; Rem. Supp. 1941 § 10758-7.]

Chapter 73.20

ACKNOWLEDGMENTS AND POWERS OF ATTORNEY

Sections	
73.20.010	Acknowledgments.
73.20.050	Agency created by power of attorney not revoked by unverified report of death.
73.20.060	Affidavit of agent as to knowledge of revocation.
73.20.070	"Missing in action" report not construed as actual knowledge.
73.20.080	Provision in power for revocation not affected.

73.20.010 Acknowledgments. In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed, before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, by any person who either

- (1) is a member of the armed forces of the United States, or
- (2) is serving as a merchant seaman outside the limits of the United States included within the forty-eight states and the District of Columbia; or
- (3) is outside said limits by permission, assignment or direction of any department or official of the United

States government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, heretofore or hereafter made or taken, are hereby declared legal, valid and binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

If the signature, rank, and branch of service or subdivision thereof, of any such commissioned officer appear upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this section. [1945 c 271 § 1; Rem. Supp. 1945 § 10758-13a. See also, 1943 c 47. Formerly RCW 73.20.010 through 73.20.040.]

Acknowledgments, generally: Chapter 64.08 RCW.

73.20.050 Agency created by power of attorney not revoked by unverified report of death. No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes either (1) a member of the armed forces of the United States, or (2) a person serving as a merchant seaman outside the limits of the United States, included within the forty-eight states and the District of Columbia; or (3) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. [1945 c 139 § 1; Rem. Supp. 1945 § 10758-70.]

Severability—1945 c 139: "If any provision of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1945 c 139 § 5.] This applies to RCW 73.20.050-73.20.080.

73.20.060 Affidavit of agent as to knowledge of revocation. An affidavit, executed by the attorney in fact or agent, setting forth that the maker of the power of attorney is a member of the armed forces of the United States or within the class of persons described in RCW 73.20.050, and that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this state, such affidavit shall likewise be recordable. [1945 c 139 § 2; Rem. Supp. 1945 § 10758-71.]

73.20.070 "Missing in action" report not construed as actual knowledge. No report or listing, either official or otherwise, of "missing" or "missing in action", as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. [1945 c 139 § 3; Rem. Supp. 1945 § 10758-72.]

73.20.080 Provision in power for revocation not affected. RCW 73.20.050 through 73.20.070 shall not be construed so as to alter or affect any provision for revocation or termination contained in such power of attorney. [1945 c 139 § 4; Rem. Supp. 1945 § 10758-73.]

Chapter 73.24

BURIAL

Sections

73.24.020	Contract for care of veterans' plot at Olympia.
73.24.030	Authorized burials in plot.

73.24.020 Contract for care of veterans' plot at Olympia. The *director of the department of finance, budget and business is hereby authorized and directed to contract with Olympia Lodge No. 1, F.&A.M., a corporation for the improvement and perpetual care of the state veterans' plot in the Masonic cemetery at Olympia; such care to include the providing of proper curbs and walks, cultivating, reseeding and fertilizing grounds, repairing and resetting the bases and monuments in place on the ground, leveling grounds, and transporting and setting headstones for graves of persons hereafter buried on the plot. [1937 c 36 § 1; RRS § 10758-1.]

*Reviser's note: Powers and duties of the "director of the department of finance, budget and business" transferred to the director of general administration, see note following RCW 73.12.010.

Cemeteries, endowment and nonendowment care: Chapters 68.40, 68.44 RCW.

73.24.030 Authorized burials in plot. The said plot shall be available, to the extent such space is available, without charge or cost for the burial of persons who have served in the army, navy, or marine corps in the United States, in the Spanish-American war, Philippine insurrection, or the Chinese Relief Expedition, or who served in any said branches of said service at any time between April 21, 1898 and July 4, 1902 and any veteran as defined in RCW 41.04.005. [1977 c 31 § 4; 1937 c 36 § 2; RRS § 10758-2.]

Chapter 73.36

UNIFORM VETERANS' GUARDIANSHIP ACT

Sections	
73.36.010	Terms defined.
73.36.020	Administrator party in interest in guardianship proceedings—Notice.
73.36.030	Appointment of guardian—Necessary when.
73.36.040	Guardian—Number of wards permitted.
73.36.050	Guardian—Appointment—Contents of petition.
73.36.060	Guardian for minor—Appointment—Prima facie evidence.
73.36.070	Guardian for incompetent—Appointment—Prima facie evidence.
73.36.080	Notice of petition.
73.36.090	Guardian's bond.
73.36.100	Accounting by guardian—Copies of all proceedings to be furnished administration—Hearings.
73.36.110	Failure to account—Penalties.
73.36.120	Compensation of guardian.
73.36.130	Investment of funds—Procedure.
73.36.140	Use of funds—Procedure.
73.36.150	Purchase of real estate—Procedure.
73.36.155	Public records—Free copies.
73.36.160	Discharge of guardian—Final account.
73.36.165	Commitment to veterans administration or other federal agency.
73.36.170	Application of chapter to other guardianships of veterans.
73.36.180	Construction of chapter—Uniformity.
73.36.190	Short title.

Guardianship, generally: Chapters 11.88, 11.92 RCW.

73.36.010 Terms defined. As used in this chapter:

"Person" means an individual, a partnership, a corporation or an association.

"Veterans administration" means the veterans administration, its predecessors or successors.

"Income" means moneys received from the veterans administration and revenue or profit from any property wholly or partially acquired therewith.

"Estate" means income on hand and assets acquired partially or wholly with "income".

"Benefits" means all moneys paid or payable by the United States through the veterans administration.

"Administrator" means the administrator of veterans affairs of the United States or his successor.

"Ward" means a beneficiary of the veterans administration.

"Guardian" means any fiduciary for the person or estate of a ward. [1951 c 53 § 1.]

73.36.020 Administrator party in interest in guardianship proceedings—Notice. The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the veterans administration. Not less than fifteen days prior to hearing in such matter notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the veterans administration having jurisdiction over the area in which any such suit or any such proceeding is pending. [1951 c 53 § 2.]

73.36.030 Appointment of guardian—Necessary when. Whenever, pursuant to any law of the United States or regulation of the veterans administration, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made in the manner hereinafter provided. [1951 c 53 § 3.]

73.36.040 Guardian—Number of wards permitted. No person other than a bank or trust company shall be guardian of more than five wards at one time, unless all the wards are members of one family. Upon presentation of a petition by an attorney of the veterans administration or other interested person, alleging that a guardian is acting in a fiduciary capacity for more than five wards as herein provided and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge him from guardianships in excess of five and forthwith appoint a successor. [1951 c 53 § 4.]

73.36.050 Guardian—Appointment—Contents of petition. (1) A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within thirty days after mailing of notice by the veterans administration to the last known address of the person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of this state.

(2) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the veterans administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(3) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the proposed guardian and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as

guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the ward.

(4) In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration. [1951 c 53 § 5.]

73.36.060 Guardian for minor—Appointment—Prima facie evidence. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or his authorized representative, setting forth the age of such minor as shown by the records of the veterans administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the veterans administration shall be prima facie evidence of the necessity for such appointment. [1951 c 53 § 6.]

73.36.070 Guardian for incompetent—Appointment—Prima facie evidence. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or his duly authorized representative, that such person has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing such veterans administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due such ward by the veterans administration, shall be prima facie evidence of the necessity for such appointment. [1951 c 53 § 7.]

73.36.080 Notice of petition. Upon the filing of a petition for the appointment of a guardian under this chapter, notice shall be given to the ward, to such other persons, and in such manner as is provided by the general law of this state, and also to the veterans administration as provided by this chapter. [1951 c 53 § 8.]

73.36.090 Guardian's bond. (1) Upon the appointment of a guardian, he shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing two years, except in cases where banks or trust companies are appointed as guardian and no bond is required by the general state law. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws of this state. The court may from time to time require the guardian to file an additional bond.

(2) Where a bond is tendered by a guardian with personal sureties, there shall be at least two such sureties and they shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all his debts and liabilities and the aggregate of other bonds in which he is principal or surety and exclusive of

property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate. [1951 c 53 § 9.]

Guardianship, generally: Chapters 11.88 and 11.92 RCW.

73.36.100 Accounting by guardian—Copies of all proceedings to be furnished administration—Hearings.

(1) Every guardian, who has received or shall receive on account of his ward any money or other thing of value from the veterans administration, at the expiration of two years from date of his appointment, and every two years thereafter on the anniversary date of his appointment, or as much oftener as the court may require, shall file with the court a full, true and accurate account under oath of all moneys or other things of value received by him, all earnings, interest or profits derived therefrom, and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in his hands at the date of the account and how invested. Each year when not required to file an account with the court, the guardian shall file an account with the proper office of the veterans administration. If the interim account be not filed with the veterans administration, or, if filed, shall be unsatisfactory, the court shall upon receipt of notice thereof from the veterans administration require the guardian forthwith to file an account which shall be subject in all respects to the next succeeding paragraphs. Any account filed with the veterans administration and approved by the chief attorney thereof may be filed with the court and be approved by the court without hearing, unless a hearing thereon be requested by some party in interest.

(2) The guardian, at the time of filing any account with the court or veterans administration shall exhibit all securities or investments held by him to an officer of the bank or other depository wherein said securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on his bond, or to the judge or clerk of a court of record in this state, or upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that he has examined the securities or investments and identified them with those described in the account and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. The guardian may exhibit the securities or investments to the judge of the court, who shall endorse on the account and copy thereof, a certificate that the securities or investments shown therein as held by the guardian were each in fact exhibited to him and that those exhibited to him were the same as those in the account and noting any omission or discrepancy. The certificate, and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each shall be filed by the guardian with his account.

(3) At the time of filing in the court any account, a certified copy thereof and a signed duplicate of each certificate filed with the court shall be sent by the

guardian to the office of the veterans administration having jurisdiction over the area in which such court is located. A duplicate signed copy or a certified copy of any petition, motion or other pleading pertaining to an account, or to any matter other than an account, and which is filed in the guardianship proceedings or in any proceedings for the purpose of removing the disability of minority or mental incapacity, shall be furnished by the persons filing the same to the proper office of the veterans administration. Unless hearing be waived in writing by the attorney of the veterans administration and by all other persons, if any, entitled to notice, the court shall fix a time and place for the hearing on the account, petition, motion or other pleading, not less than fifteen days nor more than sixty days from the date same is filed, unless a different available date be stipulated in writing. Unless waived in writing, written notice of the time and place of hearing shall be given the veterans administration office concerned and to the guardian and any others entitled to notice, not less than fifteen days prior to the date fixed for the hearing. The notice may be given by mail, in which event it shall be deposited in the mails not less than fifteen days prior to said date. The court or clerk thereof, shall mail to said veterans administration office a copy of each order entered in any guardianship proceeding wherein the administrator is an interested party.

(4) If the guardian is accountable for property derived from sources other than the veterans administration, he shall be accountable as is or may be required under the applicable law of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the veterans administration, and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section. [1951 c 53 § 10.]

73.36.110 Failure to account—Penalties. If any guardian shall fail to file with the court any account as required by this chapter, or by an order of the court, when any account is due or within thirty days after citation issues and provided by law, or shall fail to furnish the veterans administration a true copy of any account, petition or pleading as required by this chapter, such failure may in the discretion of the court be ground for his removal, in addition to other penalties provided by law. [1951 c 53 § 11.]

73.36.120 Compensation of guardian. Compensation payable to guardians shall be based upon services rendered and shall not exceed five percent of the amount of moneys received during the period covered by the account, except that the court may allow a fee of not exceeding twenty-five dollars per year, as a minimum fee, upon the approval of the chief attorney for the veterans administration. In the event of extraordinary services by any guardian, the court, upon petition and hearing thereon may authorize reasonable additional compensation therefor. A copy of the petition and notice of hearing thereon shall be given the proper office of the veterans administration in the manner provided in the

case of hearing on a guardian's account or other pleading. No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments. [1951 c 53 § 12.]

73.36.130 Investment of funds—Procedure. Every guardian shall invest the surplus funds of his ward's estate in such securities or property as authorized under the laws of this state but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the veterans administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account. [1951 c 53 § 13.]

73.36.140 Use of funds—Procedure. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person including the ward, the spouse and the minor children of the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of said petition shall be furnished the proper office of the veterans administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account or other pleading. [1951 c 53 § 14.]

73.36.150 Purchase of real estate—Procedure. (1) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect his interest, or (if he is not a minor) as a home for his dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the veterans administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(2) Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of his ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty. [1951 c 53 § 15.]

73.36.155 Public records—Free copies. When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the authorized representative of the veterans administration with a certified copy of such record. [1951 c 53 § 16. Formerly RCW 73.04.025.]

73.36.160 Discharge of guardian—Final account. In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the veterans administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the veterans administration upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered his competency. Upon hearing after notice as provided by this chapter and the determination by the court that the ward has attained majority or has recovered his competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the veterans administration as in case of other accounts, upon approval of the final account, and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his sureties released. [1951 c 53 § 17.]

73.36.165 Commitment to veterans administration or other federal agency. (1) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration or other agency of the United States government, the court, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state; and nothing in this chapter shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any hospital operated by any such agency within or without this state shall be subject to the rules and regulations of the veterans administration or other agency. The chief officer of any hospital of the veterans administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to

retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this chapter are so conditioned.

(2) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the veterans administration, or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint; as is provided in subsection (1) of this section with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any hospital of the veterans administration, or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

(3) Upon receipt of a certificate of the veterans administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the veterans administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the veterans administration or other agency of the United States pursuant to the original commitment. [1951 c 53 § 18. Formerly RCW 71.02.700 through 71.02.720.]

73.36.170 Application of chapter to other guardianships of veterans. The provisions of this chapter relating to surety bonds and the administration of estates of wards shall apply to all "income" and "estate" as defined in RCW 73.36.010 whether the guardian shall have been appointed under this chapter or under any other law of this state, special or general, prior or subsequent to the enactment hereof. [1951 c 53 § 21.]

73.36.180 Construction of chapter—Uniformity.

This chapter shall be so construed to make uniform the law of those states which enact it. [1951 c 53 § 19.]

73.36.190 Short title. This chapter may be cited as the "uniform veterans' guardianship act". [1951 c 53 § 20.]

Title 74

PUBLIC ASSISTANCE

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Chapter 74.04

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74.04.005 Definitions. For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, general assistance and federal-aid assistance.

(2) "Department"—The department of social and health services.

(3) "County office"—The administrative office for one or more counties.

(4) "Secretary"—The secretary of social and health services.

(5) "Federal-aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid

or in respect to payment by the state for public assistance rendered to any category of needy persons, including old age assistance, medical assistance, aid to families with dependent children, aid to the permanently and totally disabled persons, aid to the blind, child welfare services, and any other programs of public assistance for which provision for federal funds or aid may from time to time be made.

(6) "General assistance"—Shall include aid to unemployable persons and unemployed employable persons who are not eligible to receive or are not receiving federal-aid assistance.

(a) Unemployable persons are those persons who by reason of bodily or mental infirmity or other cause are substantially incapacitated from gainful employment.

(b) Unemployed employable persons are those persons who although capable of gainful employment are unemployed.

(7) "Medical indigents"—Are persons without income or resources sufficient to secure necessary medical services.

(8) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county office for assistance.

(9) "Recipient"—Any person receiving assistance or currently approved to receive assistance at any future date and in addition those dependents whose needs are included in the recipient's grant.

(10) "Requirement"—Items of goods and services included in the state department of social and health services standards of assistance and required by an applicant or recipient to maintain a defined standard of living.

(11) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent: *Provided*, That an applicant may retain the following described resources and not be ineligible for public assistance because of such resources.

(a) A home, which is defined as real property owned and used by an applicant or recipient as a place of residence, together with a reasonable amount of property surrounding and contiguous thereto, which is used by and useful to the applicant. Whenever a recipient shall cease to use such property for residential purposes, either for himself or his dependents, the property shall be considered as income which can be made available to meet need, and if the recipient or his dependents absent themselves from the home for a period of ninety consecutive days such absence, unless due to hospitalization or health reasons, shall raise a presumption of abandonment: *Provided*, That if in the opinion of three physicians the recipient will be unable to return to the home during his lifetime, and the home is not occupied by a spouse or dependent children or disabled sons or daughters, such property shall be considered as income which can be made available to meet need.

(b) Household furnishings and personal clothing used and useful to the person.

(c) Automobile(s) used and useful.

(d) Cash of not to exceed two hundred dollars for a single person or four hundred dollars for a family unit of two, or marketable securities of such value. This maximum shall be increased by twenty-five dollars for each additional member of the family unit.

(e) Life insurance having a cash surrender value.

(f) Other personal property and belongings which are used and useful or which have great sentimental value to the applicant or recipient.

Whenever such person ceases to make use of any of the property specified in items (b), (c) and (f) of this section, the same shall be considered as income available to meet need: *Provided*, That the department may by rule and regulation exempt such personal property and belongings which can be used by the applicant or recipient to decrease his need for public assistance or aid in rehabilitating him or his dependents.

(g) The department shall by rule and regulation fix the ceiling value for the individual or family unit for all property and belongings as defined in items (c), (d) and (e) of this section. In establishing such ceiling, the department shall establish a sliding scale based upon the family size. If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient: *Provided*, That in the determination of need of applicants for or recipients of general assistance no resources or income shall be considered as exempt per se, but the department may by rule and regulation adopt standards which will permit the exemption of the home and personal property and belongings from consideration as an available resource or income when such resources or income are determined to be necessary to the applicant's or recipient's restoration to independence.

(12) "Income"—All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient after applying for or receiving public assistance: *Provided*, That all necessary expenses that may reasonably be attributed to the earning of income shall be considered in determining net income: *Provided further*, That the department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him to decrease his need for public assistance or to aid in rehabilitating him or his dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance: *Provided further*, That in determining the amount of assistance to which a recipient of aid to the blind is entitled or to which any dependent of such recipient may be entitled under any category of public assistance, the department is hereby authorized to disregard as a resource or income the first eighty-five dollars per month of any earned income plus one-half of earned income in excess of eighty-five dollars per month and for a period of not in excess of thirty-six months such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved

by the department, as may be necessary for the fulfillment of such plan of such blind recipient who is otherwise eligible for an aid to the blind grant: *Provided further*, That in determining the amount of assistance to which a recipient of aid to families with dependent children is entitled, the department is hereby authorized to disregard as a resource or income (a) with respect to a child who is not a full time employee and who is a full time or part time student attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment, all of the earned income of such child; and (b) with respect to any other dependent child, adult, or other person in the home whose needs are taken into account in making such determination, the first thirty dollars of the total of their earned income for such month and one-third of the remainder: *Provided further*, The department may permit the above exemption of earnings of a child to be retained by such child to cover the cost of special future identifiable needs even though the total exceeds the exemptions or resources granted to applicants of public assistance, but consistent with federal requirements: *Provided further*, That in determining the amount of assistance to which a recipient of old age assistance is entitled, the department is hereby authorized to disregard as a resource or income the first twenty dollars per month of any earned income plus one-half of additional earnings up to eighty dollars of such recipient who is otherwise eligible for an old age assistance grant; but the total amount of earnings or other income if accumulated shall not, when added to the amount of cash or marketable securities exempted under (d) of subsection (11) of this section, exceed the total amounts exempted under that subsection for a family unit: *Provided further*, That a recipient of aid to the blind may accumulate without penalty from such exempt income, an amount not to exceed the maximum value of personal property as established by the department pursuant to this section less other cash, marketable securities, cash surrender value of insurance and/or car held by such recipient. In formulating rules and regulations pursuant to this chapter the department shall define "earned income" in such a manner as to meet with the approval of the department of health, education and welfare: and *Provided further*, That all resources and income not specifically exempted, and any income or other economic benefit derived from the use of, or appreciation in value of, exempt resources, shall be considered in determining the need of an applicant or recipient of public assistance.

(13) "Need"—The difference between the applicant's or recipient's cost of requirements for himself and the dependent members of his family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt net income received by or available to the applicant or recipient and the dependent members of his family.

(14) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [1979 c 141 § 294;

1969 ex.s. c 173 § 1; 1965 ex.s. c 2 § 1; 1963 c 228 § 1; 1961 c 235 § 1; 1959 c 26 § 74.04.005. Prior: (i) 1947 c 289 § 1; 1939 c 216 § 1; Rem. Supp. 1947 § 10007-101a. (ii) 1957 c 63 § 1; 1953 c 174 § 17; 1951 c 122 § 1; 1951 c 1 § 3; 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

74.04.006 Contract of sale of property—Availability as a resource or income—Establishment. The department may establish, by rule and regulation, the availability of a contract of sale of real or personal property as a resource or income as defined in RCW 74.04.005. [1973 1st ex.s. c 49 § 2.]

74.04.011 Secretary's authority—Personnel. The secretary of social and health services shall be the administrative head and appointing authority of the department of social and health services and he shall have the power to and shall employ such assistants and personnel as may be necessary for the general administration of the department: *Provided*, That such employment is in accordance with the rules and regulations of the state merit system. The secretary shall through and by means of his assistants and personnel exercise such powers and perform such duties as may be prescribed by the public assistance laws of this state.

The authority vested in the secretary as appointing authority may be delegated by the secretary or his designee to any suitable employee of the department. [1979 c 141 § 295; 1969 ex.s. c 173 § 4; 1959 c 26 § 74.04.011. Prior: 1953 c 174 § 3. (i) 1937 c 111 § 3; RRS § 10785-2. (ii) 1937 c 111 § 5; RRS § 10785-4.]

State civil service law: Chapter 41.06 RCW.

74.04.015 Secretary responsible officer to administer federal funds, etc. The secretary of social and health services shall be the responsible state officer for the administration of, and the disbursement of all funds, goods, commodities and services, which may be received by the state in connection with, old age assistance, medical assistance to the aged, aid to families with dependent children, aid to the blind, disability assistance, child welfare services, vocational rehabilitation, and including, but not limited to other programs of public assistance or services related directly or indirectly to assistance programs, and all other matters included in the federal social security act approved August 14, 1935, or any other federal act or as the same may be amended excepting those required to be administered by the superintendent of public instruction or the state commission for vocational education and those required to be administered and disbursed in connection with public health services such as communicable disease control, maternal and child health, sanitation, and vital statistics services.

He shall make such reports and render such accounting as may be required by the federal agency having authority in the premises. [1979 c 141 § 296; 1963 c 228 § 2; 1959 c 26 § 74.04.015. Prior: 1953 c 174 § 49; 1937 c 111 § 12; RRS § 10785-11.]

Children's center for research and training in mental retardation, assistant secretaries as advisory committee members: RCW 28B.20.412.

74.04.017 Aid to the blind program—Personnel. The personnel in the aid to the blind program shall be chosen on the basis of their experience and qualifications in the field of work among the blind, and to the fullest extent possible shall be residents of this state at the time of their selection. In appointing and employing personnel to carry into effect the provisions of chapter 74.16 RCW, the secretary shall give preference under the merit system to qualified and available blind persons up to fifty percent of such personnel. [1979 c 141 § 297; 1959 c 26 § 74.04.017. Prior: 1953 c 174 § 4. (i) 1949 c 166 § 13; 1937 c 132 § 2; Rem. Supp. 1949 § 10785-16. (ii) 1937 c 132 § 1; RRS § 10785-15. (iii) 1937 c 111 § 11; RRS § 10785-10.]

74.04.040 Relief declared joint federal, state, and county function. The care, support, and relief of needy persons is hereby declared to be a joint federal, state, and county function. County offices are charged with the responsibility, for the administration of public assistance within the respective county or counties or parts thereof as local offices of the department as prescribed by the rules and regulations of the department. [1959 c 26 § 74.04.040. Prior: 1953 c 174 § 12; 1939 c 216 § 5; RRS § 10007-105a.]

74.04.050 Department is responsible state agency. The department shall serve as the single state agency to administer public assistance. The department is hereby empowered and authorized to cooperate in the administration of such federal laws, consistent with the public assistance laws of this state, as may be necessary to qualify for federal funds for:

- (1) Old age assistance;
- (2) Medical assistance to the aged;
- (3) Aid to dependent children;
- (4) Aid to the needy blind;
- (5) Child welfare services;
- (6) Aid to permanently and totally disabled;
- (7) Any other programs of public assistance for which provision for federal grants or funds may from time to time be made.

The state hereby accepts and assents to all the present provisions of the federal law under which federal grants or funds, goods, commodities and services are extended to the state for the support of programs administered by the department, and to such additional legislation as may subsequently be enacted as is not inconsistent with the purposes of this title, authorizing public welfare and assistance activities. The provisions of this title shall be so administered as to conform with federal requirements with respect to eligibility for the receipt of federal grants or funds.

The department shall periodically make application for federal grants or funds and submit such plans, reports and data, as are required by any act of congress as a condition precedent to the receipt of federal funds for such assistance. The department shall make and enforce such rules and regulations as shall be necessary to insure compliance with the terms and conditions of such federal grants or funds. [1963 c 228 § 3; 1959 c 26 § 74.04.050.]

Prior: 1955 c 273 § 21; 1953 c 174 § 6; 1939 c 216 § 6; RRS § 10007-106a.]

74.04.055 Cooperation with federal government—Construction. In furtherance of the policy of this state to cooperate with the federal government in the programs included in this title the secretary shall issue such rules and regulations as may become necessary to entitle this state to participate in federal grants-in-aid, goods, commodities and services unless the same be expressly prohibited by this title. Any section or provision of this title which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal matching or other funds for the various programs of public assistance. [1979 c 141 § 298; 1963 c 228 § 4; 1959 c 26 § 74.04.055. Prior: 1953 c 174 § 50.]

74.04.057 Promulgation of rules and regulations to qualify for federal funds. The department is authorized to promulgate such rules and regulations as are necessary to qualify for any federal funds available under Title XVI of the federal social security act, and any other combination of existing programs of assistance consistent with federal law and regulations. [1969 ex.s. c 173 § 3.]

74.04.060 Records, etc., confidential—Exceptions—Penalty. For the protection of applicants and recipients, the department and the county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title. In any judicial proceeding, except such proceeding as is directly concerned with the administration of these programs, such records, files, papers and communications, and their contents, shall be deemed privileged communications and except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer. However, upon written request of a parent who has been awarded visitation rights in an action for divorce or separation, the department shall disclose to him or her the current address and location of his or her natural or adopted children. Information supplied to a parent by the department shall be used only for purposes directly related to the visitation provisions of the court order of separation or decree of divorce. No parent shall disclose such information to any other person except for the purpose of enforcing visitation provisions of the said order or decree.

The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

The provisions of this section shall not apply to duly designated representatives of approved private welfare agencies, public officials, members of legislative interim committees and advisory committees when performing

duties directly connected with the administration of this title, such as regulation and investigation directly connected therewith: *Provided, however,* That any information so obtained by such persons or groups shall be treated with such degree of confidentiality as is required by the federal social security law.

It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature. The violation of this section shall be a gross misdemeanor. [1973 c 152 § 1; 1959 c 26 § 74.04.060. Prior: 1953 c 174 § 7; 1950 ex.s. c 10 § 1; 1941 c 128 § 5; Rem. Supp. 1941 § 10007-106b.]

Severability—1973 c 152: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 152 § 3.] This applies to RCW 74.04.062 and to the amendment to RCW 74.04.060 by 1973 c 152 § 1.

Child support, department may disclose information to internal revenue department: RCW 74.20.160.

74.04.062 Disclosure of information to police officer or immigration official. Upon written request of a person who has been properly identified as an officer of the law with a felony arrest warrant or a properly identified United States immigration official with a warrant for an illegal alien the department shall disclose to such officer the current address and location of the person properly described in the warrant. [1973 c 152 § 2.]

Severability—1973 c 152: See note following RCW 74.04.060.

74.04.070 County office—Administrator. There may be established in each county of the state a county office which shall be administered by an executive officer designated as the county administrator. The county administrator shall be appointed by the secretary in accordance with the rules and regulations of the state merit system. [1979 c 141 § 299; 1959 c 26 § 74.04.070. Prior: 1953 c 174 § 13; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

74.04.080 Personnel—Administrator's bond. The county administrator shall have the power to, and shall, employ such personnel as may be necessary to carry out the provisions of this title, which employment shall be in accordance with the rules and regulations of the state merit system, and in accordance with personnel and administrative standards established by the department. The county administrator before qualifying shall furnish a surety bond in such amount as may be fixed by the secretary, but not less than five thousand dollars, conditioned that the administrator will faithfully account for all money and property that may come into his possession or control. The cost of such bond shall be an administrative expense and shall be paid by the department. [1979 c 141 § 300; 1959 c 26 § 74.04.080. Prior: 1953 c 174 § 14; 1941 c 128 § 2, part; 1939 c 216

§ 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

74.04.120 Basis of state's allocation of federal aid funds. Allocations of state and federal funds shall be made upon the basis of need within the respective counties as disclosed by the quarterly budgets, considered in conjunction with revenues available for the satisfaction of that need: *Provided*, That in preparing his quarterly budget for federal aid assistance, the administrator shall include the aggregate of the individual case load approved by the department to date on the basis of need and the secretary shall approve and allocate an amount sufficient to service the aggregate case load as included in said budget, and in the event any portion of the budgeted case load cannot be serviced with moneys available for the particular category for which an application is made the committee may on the administrator's request authorize the transfer of sufficient general assistance funds to the appropriation for such category to service such case load and secure the benefit of federal matching funds. [1979 c 141 § 301; 1959 c 26 § 74.04.120. Prior: 1939 c 216 § 8, part; RRS § 10007-108a, part.]

74.04.180 Joint county administration. Public assistance may be administered through a single administrator and a single administrative office for one or more counties. There may be a local office for the transaction of official business maintained in each county. [1959 c 26 § 74.04.180. Prior: 1953 c 174 § 15; 1939 c 216 § 12; RRS § 10007-112a.]

74.04.200 State-wide standards to be enforced. It shall be the duty of the department of social and health services to establish uniform state-wide standards to govern the granting of assistance in the several categories of this title and it shall have power to compel compliance with such uniform standards as a condition to the receipt of state and federal funds by counties for social security purposes. [1979 c 141 § 302; 1959 c 26 § 74.04.200. Prior: 1939 c 216 § 14; RRS § 10007-114a.]

74.04.210 Basis of allocation of moneys. The moneys appropriated for public assistance purposes and subject to allocation as in this title provided shall be allocated to counties on the basis of past experience and established case load history. [1959 c 26 § 74.04.210. Prior: 1939 c 216 § 15; RRS § 10007-115a.]

74.04.250 General assistance—Immediate grants—Penalty. An applicant for any category of public assistance under this title may, in the discretion of the administrator, be granted general assistance at once upon making application therefor provided he submits to the administrator a sworn statement of need and resources; but if upon due investigation and inquiry on the part of the administrator it shall develop that such applicant swore falsely, he may be proceeded against criminally and if convicted be punished as for a gross misdemeanor. The county, through its prosecuting attorney, may also in such cases institute and prosecute an

action to recover any moneys wrongfully received by the applicant by means of his false statement. [1959 c 26 § 74.04.250. Prior: 1939 c 216 § 19; RRS § 10007-119a.]

General assistance defined: RCW 74.04.005.

Standards of assistance for general assistance: RCW 74.08.040.

74.04.265 Earnings—Deductions from grants. The secretary may issue rules consistent with federal laws and with memorials of the legislature, as will recognize the income of any persons without the deduction in full thereof from the amount of their grants. [1979 c 141 § 303; 1965 ex.s. c 35 § 1; 1959 c 26 § 74.04.265. Prior: 1953 c 174 § 16.]

74.04.266 General assistance—Earned income exemption to be established for unemployable persons. In determining need for general assistance for unemployable persons as defined in RCW 74.04.005(6)(a), the department may by rule and regulation establish a monthly earned income exemption in an amount not to exceed the exemption allowable under disability programs authorized in Title XVI of the federal social security act. [1977 ex.s. c 215 § 1.]

74.04.270 Audit of accounts—Uniform accounting system. It shall be the duty of the state auditor to audit the accounts, books and records of the department of social and health services. The public assistance committee shall establish and install a uniform accounting system for all categories of public assistance, applicable to all officers, boards, commissions, departments or other agencies having to do with the allowance and disbursement of public funds for assistance purposes, which said uniform accounting system shall conform to the accounting methods required by the federal government in respect to the administration of federal funds for assistance purposes. [1979 c 141 § 304; 1959 c 26 § 74.04.270. Prior: 1939 c 216 § 21; RRS § 10007-121a.]

74.04.280 Assistance nontransferable and exempt from process. Assistance given under this title shall not be transferable or assignable at law or in equity and none of the moneys received by recipients under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [1959 c 26 § 74.04.280. Prior: 1939 c 216 § 25; RRS § 10007-125a.]

74.04.290 Subpoena of witnesses, books, records, etc.—Service. In carrying out any of the provisions of this title, the secretary, county administrators, hearing examiners or other duly authorized officers of the department shall have power to subpoena witnesses, administer oaths, take testimony and compel the production of such papers, books, records and documents as they may deem relevant to the performance of their duties; but no officer or agency mentioned in this section shall have power to compel the production of any papers, books, records or documents which are in the custody of any other such officer or agency and within his or its power to provide voluntarily on request.

If an individual fails to obey the subpoena or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of a hearing, the officer or agency issuing the subpoena may petition the superior court of the county where the examination or investigation is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the agency. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order the witness shall be dealt with as for contempt of court.

The subpoena shall be served in the same manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. [1979 1st ex.s. c 171 § 2; 1979 c 141 § 305; 1969 ex.s. c 173 § 2; 1959 c 26 § 74.04.290. Prior: 1939 c 216 § 26; RRS § 10007-126a.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.04.300 Recovery of payments improperly received—Lien. If a recipient receives public assistance for which he is not eligible, or receives public assistance in an amount greater than that for which he is eligible, the portion of the payment to which he is not entitled shall be a debt due the state: *Provided*, That if any part of any assistance payment is obtained by a person as a result of a wilfully false statement, or representation, or impersonation, or other fraudulent device, or wilful failure to reveal resources or income, one hundred twenty-five percent of the amount of assistance to which he was not entitled shall be a debt due the state and shall become a lien against the real and personal property of such person from the time of filing by the department with the county auditor of the county in which the person resides or owns property, and such lien claim shall have preference to the claims of all unsecured creditors. It shall be the duty of recipients of public assistance to notify the department within twenty days of the receipt or possession of all income or resources not previously declared to the department, and any failure to so report shall be prima facie evidence of fraud: *Provided further*, That there shall be no liability placed upon recipients for receipt of overpayments of public assistance which result from error on the part of the department and no fault on

the part of the recipient in obtaining or retaining the assistance if the recovery thereof would be inequitable as determined by the secretary or his designee.

Debts due the state pursuant to the provisions of this section, may be recovered by the state by deduction from the subsequent assistance payments to such persons or may be recovered by a civil action instituted by the attorney general. [1979 c 141 § 306; 1973 1st ex.s. c 49 § 1; 1969 ex.s. c 173 § 18; 1959 c 26 § 74.04.300. Prior: 1957 c 63 § 3; 1953 c 174 § 35; 1939 c 216 § 27; RRS § 10007-127a.]

74.04.305 Overpayments and debts due the state—Suspense account—Charge off. Any overpayment or debt due the state from a recipient which the secretary of the department deems uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted an asset: *Provided further*, That the secretary may charge off as finally uncollectible any overpayment or debt which he deems uncollectible at any time after six years after any person owing such overpayment or debt ceases to be a recipient of public assistance if the secretary and the attorney general are satisfied that there are no available and lawful means by which such overpayment or debt may thereafter be collected. [1979 c 141 § 307; 1965 ex.s. c 91 § 1.]

74.04.306 Overpayments and debts due the state—Proceedings for collection—Limitation. The secretary shall commence action for the collection of overpayments and debts due the state within six years after the notice of overpayment is given or within six years after the person ceases to be a recipient of public assistance, whichever is later. No proceedings for the collection of such overpayments or debts shall be begun after the expiration of such period. [1979 c 141 § 308; 1965 ex.s. c 91 § 2.]

74.04.310 Authority to accept contributions. In furthering the purposes of this title, the secretary or any county administrator may accept contributions or gifts in cash or otherwise from persons, associations or corporations, such contributions to be disbursed in the same manner as moneys appropriated for the purposes of this title: *Provided*, That the donor of such gifts may stipulate the manner in which such gifts shall be expended. [1979 c 141 § 309; 1959 c 26 § 74.04.310. Prior: 1939 c 216 § 28; RRS § 10007-128a.]

74.04.330 Annual reports by assistance organizations—Penalty. Every person, firm, corporation, association or organization receiving twenty-five percent or more of its income from contributions, gifts, dues, or other payments from persons receiving assistance, community work and training, federal-aid assistance, or any other form of public assistance from the state of Washington or any agency or subdivision thereof, and engaged in political or other activities in behalf of such persons receiving such public assistance, shall, within ninety days after the close of each calendar year, make a report to the secretary of social and health services for the preceding year, which report shall contain:

(1) A statement of the total amount of contributions, gifts, dues, or other payments received;

(2) The names of any and all persons, firms, corporations, associations or organizations contributing the sum of twenty-five dollars or more during such year, and the amounts contributed by such persons, firms, corporations, associations, or organizations;

(3) A full and complete statement of all disbursements made during such year, including the names of all persons, firms, corporations, associations, or organizations to whom any moneys were paid, and the amounts and purposes of such payments; and

(4) Every such report so filed shall constitute a public record.

(5) Any person, firm, or corporation, and any officer or agent of any firm, corporation, association or organization, violating this section by failing to file such report, or in any other manner, shall be guilty of a gross misdemeanor. [1979 c 141 § 310; 1963 c 228 § 5; 1959 c 26 § 74.04.330. Prior: 1941 c 170 § 7; Rem. Supp. 1941 § 10007-138.]

74.04.340 Federal surplus commodities—Certification of persons eligible to receive commodities. The state department of social and health services is authorized to assist needy families and individuals to obtain federal surplus commodities for their use, by certifying, when such is the case, that they are eligible to receive such commodities. However, only those who are receiving or are eligible for public assistance or care and such others as may qualify in accordance with federal requirements and standards shall be certified as eligible to receive such commodities. [1979 c 141 § 311; 1959 c 26 § 74.04.340. Prior: 1957 c 187 § 2.]

Purchase of federal property: Chapter 39.32 RCW.

74.04.350 Federal surplus commodities—Not to be construed as public assistance, eligibility not affected. Federal surplus commodities shall not be deemed or construed to be public assistance and care or a substitute, in whole or in part, therefor; and the receipt of such commodities by eligible families and individuals shall not subject them, their legally responsible relatives, their property or their estates to any demand, claim or liability on account thereof. A person's need or eligibility for public assistance or care shall not be affected by his receipt of federal surplus commodities. [1959 c 26 § 74.04.350. Prior: 1957 c 187 § 3.]

74.04.360 Federal surplus commodities—Certification deemed administrative expense of department. Expenditures made by the state department of social and health services for the purpose of certifying eligibility of needy families and individuals for federal surplus commodities shall be deemed to be expenditures for the administration of public assistance and care. [1979 c 141 § 312; 1959 c 26 § 74.04.360. Prior: 1957 c 187 § 4.]

74.04.370 Federal surplus commodities—County program, expenses, handling of commodities. See RCW 36.39.040.

74.04.380 Federal and other surplus food commodities—Agreements—Personnel—Facilities—Cooperation with other agencies—Discontinuance of program. The secretary of social and health services, from funds appropriated to his department for such purpose, shall, upon receipt of authorization from the governor, provide for the receiving, warehousing and distributing of federal and other surplus food commodities for the use and assistance of recipients of public assistance or other needy families and individuals certified as eligible to obtain such commodities. The secretary is authorized to enter into such agreements as may be necessary with the federal government or any state agency in order to participate in any program of distribution of surplus food commodities including but not limited to a food stamp program. The secretary shall hire personnel, establish distribution centers and acquire such facilities as may be required to carry out the intent of this section; and he may carry out any such program as a sole operation of the department or in conjunction or cooperation with any similar program of distribution by private individuals or organizations, any department of the state or any political subdivision of the state.

The secretary shall discontinue such program, or any part thereof, whenever in the determination of the governor such program, or any part thereof, is no longer in the best interest of the state. [1979 c 141 § 313; 1963 c 219 § 1; 1961 c 112 § 1.]

74.04.385 Unlawful practices relating to surplus commodities—Penalty. It shall be unlawful for any recipient of federal or other surplus commodities received under RCW 74.04.380 to sell, transfer, barter or otherwise dispose of such commodities to any other person. It shall be unlawful for any person to receive, possess or use any surplus commodities received under RCW 74.04.380 unless he has been certified as eligible to receive, possess and use such commodities by the state department of social and health services.

Violation of the provisions of RCW 74.04.380 or this section shall constitute a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five hundred dollars or both. [1979 c 141 § 314; 1963 c 219 § 2.]

74.04.390 Community work and training program—Defined. The term community work and training program shall be defined as follows: A plan jointly entered into between the state department of social and health services and an agency, department, board or commission of the state or federal government, county, city or municipal corporation which is subject to approval of the state department of social and health services, under which the state or federal government, county, city or municipal corporation undertakes to provide work in and about public works or improvements, utilizing labor and services required to be performed by applicants or recipients of public assistance. [1979 c 141 § 315; 1963 c 228 § 6; 1961 c 269 § 2.]

Severability—1961 c 269: "The several provisions of this act are hereby declared to be separate and severable and if any clause, sentence, paragraph, subdivision, section or part thereof shall for any reason be adjudged invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other clause, sentence, paragraph, subdivision or section." [1961 c 269 § 8.] This applies to RCW 74.04.390 through 74.04.440.

74.04.400 Community work and training program—Rules and regulations. The state department of social and health services is empowered and directed to adopt such rules and regulations as will make a community work and training program fair, efficient and workable. [1979 c 141 § 316; 1963 c 228 § 7; 1961 c 269 § 3.]

74.04.410 Community work and training program—Agreements with governmental entities for employment of eligible persons—Amount of earnings. When the state or federal government or any agencies thereof, a county, city or municipal corporation has undertaken or is about to undertake, a program which is for the benefit of the general public or any segment thereof, said state agency, county, city or municipal corporation may enter into an agreement with the state department of social and health services wherein and whereby the department of social and health services may assign unemployed employable persons who have attained the age of eighteen and who are eligible for assistance to do and perform work and labor on behalf of said state, or federal government, county, city or municipal corporation and such person shall perform, if available, work and labor for such state, or federal government, county, city or municipal corporation for the length of time necessary to earn at the legal minimum wage or the going hourly rate prevailing in the area for labor of like kind, whichever is higher, an amount of money equal to the amount of assistance granted to such person and the assistance unit of which he or his dependents is a part. [1979 c 141 § 317; 1963 c 228 § 8; 1961 c 269 § 4.]

74.04.420 Community work and training program—Denial or suspension of assistance—Grounds. Any person assigned to a community work and training program may be denied assistance or may be suspended for such time as may be fixed by the rules and regulations of the department of social and health services if such person without good cause:

- (1) Fails or refuses to satisfactorily perform the labor or services as may be assigned to him;
 - (2) Fails or refuses to report to work under such a program when and as directed by the state, or federal government, county, city or municipal corporation or by his foreman, overseer or other supervisor therein;
 - (3) Abandons or repeatedly absents himself from work;
 - (4) Is insubordinate to his foreman, overseer or other supervisor therein;
 - (5) Fails or refuses to take due precaution for the safety of himself or others or to use safety clothing or equipment made available to him; or
 - (6) Is guilty of misconduct connected with such work.
- [1979 c 141 § 318; 1963 c 228 § 9; 1961 c 269 § 5.]

74.04.430 Community work and training program—Approval of program by department—Workmen's compensation. All community work and training programs, before an applicant or recipient of public assistance shall be assigned shall have met the approval of the state department of social and health services: *Provided*, That the state, or federal government, county, city or municipal corporation utilizing assistance applicants or recipients for work and labor shall insure that such employment is covered by workmen's compensation administered by the department of labor and industries, or a similar plan approved by the department of social and health services, and all fees and charges for such coverage shall be paid by such state, or federal government, county, city or municipal corporation except that portion which is paid for medical aid and is properly chargeable to such applicant or recipient of assistance. [1979 c 141 § 319; 1963 c 228 § 10; 1961 c 269 § 6.]

74.04.440 Community work and training program—Governmental entity to furnish transportation, tools, supervision. The state, or federal government, county, city or municipal corporation utilizing assistance applicants or recipients for work and labor shall furnish, where necessary, transportation, protective clothing and necessary tools and equipment for individuals performing such work or labor and shall take such measures as are necessary to insure that adequate supervision is provided on all such programs. [1963 c 228 § 11; 1961 c 269 § 7.]

74.04.450 Community work and training program—Work to serve useful public purpose and not displace regular workers. The work performed on a community work and training program by a recipient of public assistance must serve a useful public purpose, must not displace regular workers or result in the performance by such persons of work that would otherwise be performed by employees of public or private agencies, institutions or organizations except in case of projects which are emergent or nonrecurring. [1963 c 228 § 12.]

74.04.460 Community work and training program—Effect as to employment security program. Work and labor performed by an applicant or recipient of public assistance on a community work and training program shall not be deemed employment under the provisions of Title 50 RCW, and shall not deprive such person of any rights or benefits available thereunder. [1963 c 228 § 13.]

74.04.470 Community work and training program—Department may terminate agreements. The state department of social and health services shall have the right to terminate unilaterally any agreement entered into pursuant to RCW 74.04.410 with the state or federal government or any agency thereof, a county, city or municipal corporation whenever the community work and training program contemplated by such agreement fails, for any reason, to meet any provision of chapter 74.04 RCW relating to community work and training or

the purposes thereof, or any rule or regulation promulgated by the department thereunder. [1979 c 141 § 320; 1963 c 228 § 14.]

74.04.480 Educational leaves of absence for personnel. The state department of social and health services is hereby authorized to promulgate rules and regulations governing the granting to any employee of the department, other than a provisional employee, a leave of absence for educational purposes to attend an institution of learning for the purpose of improving his skill, knowledge and technique in the administration of social welfare programs which will benefit the department.

Pursuant to the rules and regulations of the department, employees of the department who are engaged in the administration of public welfare programs may (1) attend courses of training provided by institutions of higher learning; (2) attend special courses of study or seminars of short duration conducted by experts on a temporary basis for the purpose; (3) accept fellowships or traineeships at institutions of higher learning with such stipends as are permitted by regulations of the federal government.

The department of social and health services is hereby authorized to accept any funds from the federal government or any other public or private agency made available for training purposes for public assistance personnel and to conform with such requirements as are necessary in order to receive such funds. [1979 c 141 § 321; 1963 c 228 § 15.]

74.04.500 Food stamp program—Authorized. The department of social and health services is authorized to establish a food stamp program under the federal food stamp act of 1964. [1979 c 141 § 322; 1969 ex.s. c 172 § 4.]

74.04.505 Food stamp program—Eligibility. Eligibility for the food stamp program shall be determined on a household basis. A "household" means all related or nonrelated persons living together as one economic unit to share common household facilities and customarily purchase and prepare food in common. It shall also mean a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption. Persons in nursing homes, infirmaries, hospitals, boarding homes or eating in restaurants and those without cooking facilities are excluded from this program. [1969 ex.s. c 172 § 5.]

74.04.510 Food stamp program—Rules and regulations. The department shall promulgate rules and regulations conforming to federal laws, rules and regulations required to be observed in maintaining the eligibility of the state to receive from the federal government and to issue or distribute to recipients, food stamps or coupons under a food stamp plan. Such rules and regulations shall relate to and include, but shall not be limited to: (1) The classifications of and requirements of eligibility of households to receive food stamps or coupons. (2) The periods during which households shall be certified or recertified to be eligible to receive food

stamps or coupons under this plan. (3) The establishment of a purchase payment schedule for coupons graduated on the basis of the incomes and the number of persons in an eligible household. [1969 ex.s. c 172 § 6.]

74.04.515 Food stamp program—Discrimination prohibited. In determining eligibility for purchase of food stamps, there shall be no discrimination against any household by reason of race, color, or national origin. [1969 ex.s. c 172 § 7.]

74.04.520 Food stamp program—Confidentiality. The provisions of RCW 74.04.060 relating to disclosure of information regarding public assistance recipients shall apply to recipients of food stamps. [1969 ex.s. c 172 § 8.]

74.04.525 Food stamp program—Need or eligibility for public assistance not affected. A person's need or eligibility for public assistance or care shall not be affected by his receipt of food stamps. [1969 ex.s. c 172 § 9.]

74.04.527 Food stamp program—Penalty for reselling or purchasing resold food stamps or food purchased with food stamps. See RCW 9.91.120.

74.04.530 Recipient receiving industrial insurance compensation—Subrogation rights of department—Lien—Withhold and deliver notice. Notwithstanding any provisions in Title 51 RCW to the contrary, by accepting public assistance from the department of social and health services, the recipient thereof shall be deemed to have subrogated said department to the recipient's right to recover net time loss compensation due to such recipient pursuant to the provisions of Title 51 RCW of up to eighty percent of the extent of such assistance or compensation, whichever is less, furnished to the recipient for or during the period for which time loss compensation is payable: *Provided*, That where public assistance has been furnished to one or more persons to whom such a recipient owes a duty of support, whether such duty has been expressed by an order of court or otherwise, the department's right to recover any time loss compensation shall be limited to that part of such compensation allocated to such persons by RCW 51.32.090: *Provided, further*, That the amount to be repaid to the department of social and health services shall bear its proportionate share of attorney's fees and costs, if any, incurred by the injured workman or his dependents. The department of social and health services may assert and enforce a lien and notice to withhold and deliver as hereinafter provided to secure reimbursement of any public assistance paid for or during the period and for the purposes expressed in this section: *Provided, further*, That no claim for payment under chapter 73.34 RCW shall be subject to garnishment, attachment, levy, or execution. [1973 1st ex.s. c 102 § 1.]

74.04.540 Recipient receiving industrial insurance compensation—Form of lien and notice to withhold and deliver. The form of lien and notice to withhold and

deliver in RCW 74.04.530 shall be signed by the secretary or his authorized representative and shall be substantially as follows:

**STATEMENT OF LIEN AND NOTICE
TO WITHHOLD AND DELIVER**

TO: State of Washington, Department of Labor and Industries

NOTICE IS HEREBY GIVEN THAT DURING THE PERIOD commencing ----- and ending -----, the department of social and health services furnished public assistance to ----- in the amount of \$-----, and therefore it claims a lien in the amount of \$-----, upon time loss compensation payable to said recipient for or during said period in the amount above stated. You are therefore commanded to withhold and deliver to the department of social and health services, to the extent of the amount claimed due, any funds you now hold or which may come into your possession on account of time loss compensation payable to said recipient for or during the period mentioned.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL
AND HEALTH SERVICES
BY -----
(Title)

[1973 1st ex.s. c 102 § 2.]

74.04.550 Recipient receiving industrial insurance compensation—Effective date of lien and notice—Service. The effective date of the statement of lien and notice to withhold and deliver provided in RCW 74.04.540, shall be the day that it is received by the director of the department of labor and industries or an employee of his office of suitable discretion: *Provided*, That service of such statement of lien and notice to withhold and deliver may be made personally or by regular mail, postage prepaid: *Provided, further*, That a copy of the statement of lien and notice to withhold and deliver shall be mailed to the recipient at his last known address by certified mail, return receipt requested, no later than three days after such statement of lien and notice to withhold and deliver has been mailed or delivered to the department of labor and industries. [1973 1st ex.s. c 102 § 3.]

74.04.560 Recipient receiving industrial insurance compensation—Duty to withhold and deliver—Amount. The director of the department of labor and industries, following receipt of the statement of lien and notice to withhold and deliver, shall deliver to the secretary of the department of social and health services or his designee any funds up to the amount claimed he may hold, or which may at any time come into his possession, on account of time loss compensation payable to said recipient for or during the period stated, immediately upon a final determination of the recipient's entitlement to the time loss compensation in accordance with the provisions of Title 51 RCW. [1973 1st ex.s. c 102 § 4.]

74.04.570 Recipient receiving industrial insurance compensation—Hearing. Any person feeling himself aggrieved by the action of the department of social and health services in impounding his time loss compensation as provided in RCW 74.04.530 through 74.04.580 shall have the right to an administrative hearing, which hearing may be conducted by an examiner designated by the secretary for such purpose.

Any such person who desires a hearing shall, within thirty days after the notice to withhold and deliver has been mailed to or served upon the director of the department of labor and industries and said appellant, file with the secretary a notice of appeal from said action.

The hearings conducted shall be in accordance with chapter 34.04 RCW (Administrative Procedure Act). [1973 1st ex.s. c 102 § 5.]

74.04.580 Recipient receiving industrial insurance compensation—Application. RCW 74.04.530 through 74.04.580 shall not apply to persons whose eligibility for benefits under Title 51 RCW, is based upon an injury or illness occurring prior to July 1, 1972. [1973 1st ex.s. c 102 § 6.]

74.04.600 Supplemental security income program—Purpose. The purpose of RCW 74.04.600 through 74.04.650 is to recognize and accept that certain act of congress known as Public Law 92-603 and Public Law 93-66, and to enable the department of social and health services to take advantage of and implement the provisions of that act. The state shall provide assistance to those individuals who were eligible or would have been eligible for benefits under this state's old age assistance, disability assistance, and aid to the blind programs as they were in effect in December, 1973 but who will no longer be eligible for such program due to Title XVI of the Social Security Act. [1973 2nd ex.s. c 10 § 1.]

74.04.610 Supplemental security income program—Termination of federal financial assistance payments—Supersession by supplemental security income program. Effective January 1, 1974, the financial assistance payments under the federal aid categories of old age assistance, disability assistance, and blind assistance provided in chapters 74.08, 74.10, and 74.16 RCW, respectively, and the corresponding provisions of RCW 74.04.005, shall be terminated and superseded by the national program to provide supplemental security income to individuals who have attained age sixty-five or are blind or disabled as established by Public Law 92-603 and Public Law 93-66: *Provided*, That the agreements between the department of social and health services and the United States department of health, education and welfare receive such legislative authorization and/or ratification as required by RCW 74.04.630. [1973 2nd ex.s. c 10 § 2.]

74.04.620 State supplementation to national program of supplemental security income—Authorized. The department is authorized to establish a program of state

supplementation to the national program of supplemental security income consistent with Public Law 92-603 and Public Law 93-66 to those persons who are in need thereof in accordance with eligibility requirements established by the department.

The department is authorized to establish reasonable standards of assistance and resource and income exemptions specifically for such program of state supplementation which shall be consistent with the provisions of the Social Security Act. [1973 2nd ex.s. c 10 § 3.]

74.04.630 State supplementation to national program of supplemental security income—Contractual agreements with federal government—Authorization and ratification required. The department shall enter into contractual agreements with the United States department of health, education and welfare, consistent with the provisions of Public Laws 92-603 and 93-66, and to be effective January 1, 1974, for the purpose of enabling the secretary of the department of health, education and welfare to perform administrative functions of state supplementation to the national supplemental security income program and the determination of medicaid eligibility on behalf of the state. The department is authorized to transfer and make payments of state funds to the secretary of the department of health, education and welfare as required by Public Laws 92-603 and 93-66: *Provided, however,* That such agreements shall be submitted for review and comment to the social and health services committees of the senate and house of representatives, and shall be subject to authorization and/or ratification by the legislative budget committee, and such agreements shall not bind the state unless and until such authorization and/or ratification is given: *Provided further, however,* That if the authorization and ratification is not given, the department of social and health services shall administer the state supplemental program as established in RCW 74.04.620. [1973 2nd ex.s. c 10 § 4.]

74.04.640 Acceptance of referrals for vocational rehabilitation—Reimbursement. Referrals to the state department of social and health services for vocational rehabilitation made in accordance with section 1615 of Title XVI of the Social Security Act, as amended, shall be accepted by the state.

The department shall be reimbursed by the secretary of the department of health, education and welfare for the costs it incurs in providing such vocational rehabilitation services. [1973 2nd ex.s. c 10 § 5.]

74.04.650 Individuals failing to comply with federal drug abuse and alcoholism treatment requirements—Reapplication for state assistance required. Notwithstanding any other provisions of RCW 74.04.600 through 74.04.650 for those individuals who have been receiving supplemental security income assistance and failed to comply with federal requirements relating to drug abuse and alcoholism treatment and rehabilitation shall be required to reapply for state assistance programs to be eligible for state assistance. [1973 2nd ex.s. c 10 § 6.]

Chapter 74.08

ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE—OLD AGE ASSISTANCE

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74.08.025 Eligibility for public assistance generally. Public assistance shall be awarded to any applicant:

- (1) Who is in need; and
- (2) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and
- (3) Who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a public institution who could qualify for federal aid assistance: *Provided,* That the assistance paid by the department to recipients in nursing homes, or receiving nursing home care, may cover the cost of clothing and incidentals and general maintenance exclusive of

medical care and health services. The department may pay a grant to cover the cost of clothing and personal incidentals in public or private medical institutions and institutions for tuberculosis. [1971 ex.s. c 169 § 1; 1967 ex.s. c 31 § 1; 1959 c 26 § 74.08.025. Prior: 1953 c 174 § 19.]

Aid to dependent children: RCW 74.12.030.

Aid to the blind: RCW 74.16.030.

Disability assistance: RCW 74.10.020.

74.08.030 Old age assistance eligibility requirements. In addition to meeting the eligibility requirements of RCW 74.08.025, an applicant for old age assistance must be an applicant who:

(1) Has attained the age of sixty-five: *Provided*, That if an applicant for old age assistance is already on the assistance rolls in some other program or category of assistance, such applicant shall be considered eligible the first of the month immediately preceding the date on which such applicant will attain the age of sixty-five; and

(2) Is a resident of the state of Washington. [1971 ex.s. c 169 § 2; 1961 c 248 § 1; 1959 c 26 § 74.08.030. Prior: 1953 c 174 § 20; 1951 c 165 § 1; 1951 c 1 § 5; 1949 c 6 § 4; Rem. Supp. 1949 § 9998-33d.]

74.08.040 Amount of grant—Standards of assistance. Grants shall be awarded on a uniform state-wide basis in accordance with standards of assistance established by the department. The department shall establish standards of assistance for old age assistance, aid to dependent children, aid to the blind, and general assistance to unemployable persons which shall be used to determine an applicant's or recipient's living requirements and which shall include reasonable allowances for shelter, fuel, food, clothing, household maintenance and operation, personal maintenance, and necessary incidentals. The total dollar value of the assistance budget shall, under average conditions, be not less than seventy-five dollars per month for an individual living alone; but a recipient shall not receive a grant of seventy-five dollars or more unless his actual requirements amount to seventy-five dollars. Grants shall be paid in the amount of requirements less all available income and resources which can be applied by the recipient toward meeting need, including shelter.

In order to determine such standards of assistance the department shall establish objective budgetary guides based upon actual living cost studies of the items of the budget. Such living cost studies shall be renewed or revised annually and new standards of assistance reflecting current living costs shall determine budgets of need. Any indicated adjustment in standards shall become effective not later than June 1st of 1953 and June 1st of each succeeding year.

The standards of assistance shall take into account the economy of joint living arrangements, and the department may, by rule and regulation, prescribe maximums for grants.

For general assistance to unemployed employable persons, the department shall establish standards of assistance based upon annual living cost studies and

compatible with a minimum necessary for decent and healthful subsistence. Such standards shall permit the meeting of actual and emergent need on an individual basis. [1959 c 26 § 74.08.040. Prior: 1957 c 63 § 2; 1953 c 174 § 18; 1951 c 1 § 6; 1949 c 6 § 5; Rem. Supp. 1949 § 9998-33e.]

74.08.043 Need for personal and special care—Authority to consider in determining living requirements. In determining the living requirements of otherwise eligible applicants and recipients of old age assistance, aid to the blind, disability assistance and general assistance, the department is authorized to consider the need for personal and special care and supervision due to physical and mental conditions. [1969 ex.s. c 172 § 10.]

74.08.044 Need for personal and special care—Licensing—Rules and regulations. The department is authorized to promulgate rules and regulations establishing eligibility for alternate living arrangements, and license the same, including minimum standards of care, based upon need for personal care and supervision beyond the level of board and room only, but less than the level of care required in a hospital or a skilled nursing home as defined in the federal social security act. [1975-'76 2nd ex.s. c 52 § 1; 1969 ex.s. c 172 § 11.]

74.08.045 Need for personal and special care—Purchase of personal and special care by department. The department may purchase such personal and special care at reasonable rates established by the department from substitute homes and intermediate care facilities providing this service is in compliance with standards of care established by the regulations of the department. [1969 ex.s. c 172 § 12.]

74.08.047 General assistance for persons attending high school or vocational or technical institution. The department shall provide general assistance to any person who meets the eligibility requirements of RCW 74.08.025 and who at the time of attaining the age of eighteen years is attending a state approved high school or vocational or technical training institution and is a recipient or beneficiary of "public assistance" as defined in RCW 74.04.005(1): *Provided*, That such general assistance shall continue so long as the person continually attends school on a full time basis in accordance with the requirements of the appropriate school authorities, through the end of the school year immediately following the person's eighteenth birthday: *Provided further*, That the department of social and health services is authorized to extend this limitation for one additional year if in the opinion of the department such extension will result in the completion of a secondary education. [1973 1st ex.s. c 35 § 1.]

74.08.048 Grants to be on uniform state-wide basis. Grants shall be awarded on a uniform state-wide basis in accordance with standards of assistance established by the department for general assistance to unemployable persons. [1973 1st ex.s. c 35 § 2.]

74.08.050 Applications for grants. Application for a grant in any category of public assistance shall be made to the county office by the applicant or by another on his behalf, and shall be reduced to writing upon standard forms prescribed by the department, and a written acknowledgment of receipt of the application by the department shall be given to each applicant at the time of making application. [1971 ex.s. c 169 § 3; 1959 c 26 § 74.08.050. Prior: 1953 c 174 § 26; 1949 c 6 § 6; Rem. Supp. 1949 § 9998-33f.]

74.08.055 Verification of applications—Penalty. Each applicant for or recipient of public assistance shall make an application for assistance which shall contain or be verified by a written declaration that it is made under the penalties of perjury. The secretary, by rule and regulation, may require that any other forms filled out by applicants or recipients of public assistance shall contain or be verified by a written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each applicant shall be so informed at the time of the signing.

Any applicant for or recipient of public assistance who wilfully makes and subscribes any application, statement or other paper which contains or is verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and correct as to every material matter shall be guilty of a felony. [1979 c 141 § 323; 1959 c 26 § 74.08.055. Prior: 1953 c 174 § 27.]

74.08.060 Approval or denial of application—Applications prior to eligibility. The department shall be required to approve or deny the application within forty-five days after the filing thereof and shall immediately notify the applicant in writing of its decision: *Provided*, That if the department is not able within forty-five days, despite due diligence, to secure all information necessary to establish his eligibility, the department is charged to continue to secure such information and if such information, when established, makes applicant eligible, the department shall pay his grant from date of authorization or forty-five days after date of application whichever is sooner.

Any person entitled to relief but under temporary disability from making application, or any person about to become sixty-five years of age or the parent of an unborn child who upon birth will become a dependent child may at any time after forty-five days prior to the occurrence of any of said events make application as herein provided. [1969 ex.s. c 173 § 6; 1959 c 26 § 74.08.060. Prior: 1953 c 174 § 28; 1949 c 6 § 7; Rem. Supp. 1949 § 9998-33g.]

74.08.070 Fair hearing on grievances—Procedure—Transcript provided for judicial review. Any applicant or recipient feeling himself aggrieved by the decision of the department or any authorized agency of the department shall have the right to a fair hearing to be conducted by the secretary of the department or by a duly appointed, qualified hearing examiner especially appointed by the secretary for such purpose. The hearing

shall be conducted in the county in which the appellant resides, and a tape recording of the testimony shall be made and included in the record, the costs of which shall be borne by the department. A copy of this tape recording shall be provided the appellant if request for same is made in writing by the appellant or his attorney of record.

In the event an appellant feels aggrieved by the decision in a fair hearing under this section, and if the appellant files an appeal to the superior court for judicial review in accordance with chapter 34.04 RCW as now or hereafter amended, the appellant is entitled to a typed transcript of the tape recordings or such portion thereof as the applicant requests from the department, if the request is made by the appellant or the appellant's attorney of record.

Any appellant who desires a fair hearing shall within ninety days after receiving notice of the decision of the department or an authorized agency of the department, file with the secretary a notice of appeal from the decision. The department shall notify the appellant of the time and place of said hearing at least twenty days prior to the date thereof by registered mail or by personal service upon said appellant, unless otherwise agreed by appellant and the department.

At any time after the filing of the notice of appeal with the secretary, any appellant or attorney for appellant with written authorization or next of kin shall have the right of access to, and can examine any files and records of the department related to the case of [on] appeal.

It shall be the duty of the department within seventy-five days after receipt of the notice of appeal to notify the appellant of the decision of the secretary: *Provided*, That any overpayment which the department may be entitled to recover as a result of such decision shall be limited to the amount recoverable up to the sixtieth day after receipt of the notice of appeal.

If the decision of the secretary is made in favor of the appellant, assistance shall be paid from the date of the denial of the application or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the initial departmental county office decision. [1979 1st ex.s. c 92 § 1; 1979 c 141 § 324; 1969 ex.s. c 172 § 1; 1959 c 26 § 74.08.070. Prior: 1953 c 174 § 30; 1949 c 6 § 8; Rem. Supp. 1949 § 9998-33h.]

74.08.080 Judicial review. In the event an appellant feels himself aggrieved by the decision rendered in the hearing provided for in RCW 74.08.070, he shall have the right to petition the superior court for judicial review in accordance with the provisions of chapter 34.04 RCW, as now or hereafter amended. Either party may appeal from the decision of the superior court to the supreme court or the court of appeals of the state: *Provided*, That no filing fee shall be collected of the appellant and no bond shall be required on any appeal under this chapter. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the appellant, said appellant shall be

entitled to reasonable attorney's fees and costs. If a decision of the court is made in favor of the appellant, assistance shall be paid from date of the denial of the application or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the initial departmental county office decision. [1971 c 81 § 136; 1969 ex.s. c 172 § 2; 1959 c 26 § 74.08.080. Prior: 1953 c 174 § 31; 1949 c 6 § 9; Rem. Supp. 1949 § 9998-33i.]

74.08.090 Rules and regulations. The department is hereby authorized to make rules and regulations not inconsistent with the provisions of this title to the end that this title shall be administered uniformly throughout the state, and that the spirit and purpose of this title may be complied with. The department shall have the power to compel compliance with the rules and regulations established by it. Such rules and regulations shall be filed in accordance with the Administrative Procedure Act, as it is now or hereafter amended, and copies shall be available for public inspection in the office of the department and in each county office. [1969 ex.s. c 173 § 5; 1959 c 26 § 74.08.090. Prior: 1953 c 174 § 5; 1949 c 6 § 10; Rem. Supp. 1949 § 9998-33j.]

74.08.100 Age and length of residence verification. Proof of age and length of residence in the state of any applicant may be established as provided by the rules and regulations of the department: *Provided*, That if an applicant is unable to establish proof of age or length of residence in the state by any other method he may make a statement under oath of his age on the date of application or the length of his residence in the state, before any judge of the superior court, any judge of the court of appeals, or any justice of the supreme court of the state of Washington, and such statement shall constitute sufficient proof of age of applicant or of length of residence in the state: *Provided however*, That any applicant who wilfully makes a false statement as to his age or length of residence in the state under oath before a judge of the superior court, a judge of the court of appeals, or a justice of the supreme court, as provided above, shall be guilty of a felony. [1971 c 81 § 137; 1959 c 26 § 74.08.100. Prior: 1949 c 6 § 11; Rem. Supp. 1949 § 9998-33k.]

74.08.105 Out-of-state recipients. No assistance payments shall be made to recipients living outside the state of Washington unless in the discretion of the secretary there is sound social reason for such out-of-state payments: *Provided*, That the period for making such payments when authorized shall not exceed the length of time required to satisfy the residence requirements in the other state in order to be eligible for a grant in the same category of assistance as the recipient was eligible to receive in Washington. [1979 c 141 § 325; 1959 c 26 § 74.08.105. Prior: 1953 c 174 § 39.]

74.08.112 Old age assistance grants not recoverable as debt due state—Exceptions. Old age assistance grants awarded to an applicant under the laws of the state of Washington shall not be recoverable as a debt

due the state, except where such funds have been received by the applicant contrary to law, or by fraud or deceit. Any and all claims accrued under the provisions of section 36, chapter 174, Laws of 1953 and RCW 74.08.111 are hereby renounced and declared to be null and void, except those claims which have accrued or which shall accrue on the basis of grants which have been received contrary to law, or by fraud or deceit. [1959 c 26 § 74.08.112. Prior: 1957 c 63 § 4.]

74.08.120 Funeral expenses. The term "funeral" shall mean the proper preparation and care of the remains of a deceased person with needed facilities and appropriate memorial services, including necessary costs of a lot or cremation and all services related to interment and the customary memorial marking of a grave.

The department is hereby authorized through the county offices to assume responsibility for the funeral of deceased persons dying without assets sufficient to pay for the minimum standard funeral herein provided: *Provided, however*, That the secretary may furnish funeral assistance for deceased recipients if they leave assets to a surviving spouse and/or to minor children and if the assets are resources permitted to be owned by or available to an eligible applicant or recipient under RCW 74.04.005, and the department shall thereby have a lien against said assets valid for six years from the date of filing with the county auditor and such lien claim shall have preference to all other claims except prior secured creditors. If the assets remain exempt, or if no probate is commenced, the lien shall automatically terminate without further action six years after filing. If the deceased person is survived by a spouse or is a minor child survived by his parent or parents, the department may take into consideration the assets of such surviving spouse, parent, or parents in determining whether or not the department will assume responsibility for the funeral.

The department shall not pay more than cost for a minimum standard service rendered by each vendor. Payments to the funeral director and to the cemetery or crematorium will be made by separate vouchers. The standard of such services and the uniform amounts to be paid shall be determined by the department after giving due consideration to such advice and counsel as it shall obtain from the trade associations of the various vendors and related state departments, agencies and commissions. The payments made by the department shall not be subject to supplementation by the relatives or friends of recipients. Whenever relatives or friends provide for other than the minimum standard service authorized, the state shall not participate in the payment of any part of the cost. [1979 c 141 § 326; 1969 ex.s. c 259 § 1; 1969 ex.s. c 159 § 1; 1965 ex.s. c 102 § 1; 1959 c 26 § 74.08.120. Prior: 1953 c 174 § 32; 1949 c 6 § 13; Rem. Supp. 1949 § 9998-33m.]

Indigent person, county to dispose of remains: RCW 36.39.030.

74.08.210 Grants not assignable nor subject to execution. Grants awarded under this title shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this title shall be subject to execution, levy, attachment, garnishment, or

other legal process, or to the operation of bankruptcy or insolvency law. [1959 c 26 § 74.08.210. Prior: 1941 c 1 § 16; 1935 c 182 § 17; 1933 c 29 § 13; Rem. Supp. 1941 § 9998-49.]

74.08.260 Federal act to control in event of conflict.

If any plan of administration of this title submitted to the federal security agency shall be found to be not in conformity with the federal social security act by reason of any conflict of any section, portion, clause or part of this title and the federal social security act, such conflicting section, portion, clause or part of this title is hereby declared to be inoperative to the extent that it is so in conflict, and such finding or determination shall not affect the remainder of this title. [1959 c 26 § 74.08.260. Prior: 1949 c 6 § 17; Rem. Supp. 1949 § 9998-33q.]

74.08.278 Central operating fund established. In order to comply with federal statutes and regulations pertaining to federal matching funds and to provide for the prompt payment of initial grants and adjusting payments of grants the secretary is authorized to make provisions for the cash payment of assistance by the secretary or county administrators by the establishment of a central operating fund. The secretary may establish such a fund with the approval of the state auditor from moneys appropriated to the department for the payment of general assistance in a sum not to exceed one million dollars. Such funds shall be deposited as agreed upon by the secretary and the state auditor in accordance with the laws regulating the deposits of public funds. Such security shall be required of the depository in connection with the fund as the state treasurer may prescribe. Moneys remaining in the fund shall be returned to the general fund at the end of the biennium, or an accounting of proper expenditures from the fund shall be made to the state auditor. All expenditures from such central operating fund shall be reimbursed out of and charged to the proper program appropriated by the use of such forms and vouchers as are approved by the secretary of the department and the state auditor. Expenditures from such fund shall be audited by the director of financial management and the state auditor from time to time and a report shall be made by the state auditor and the secretary as are required by law. [1979 c 141 § 327; 1959 c 26 § 74.08.278. Prior: 1953 c 174 § 42; 1951 c 261 § 1.]

74.08.280 Payments to persons incapable of self-care. If any person receiving public assistance is, on the testimony of reputable witnesses, found incapable of taking care of himself or his money, the secretary may direct the payment of the installments of public assistance to any responsible person or corporation or to a legally appointed guardian for his benefit: *Provided*, That if the state requires the appointment of a guardian for this purpose the department shall pay all costs and reasonable fees as fixed by the court. [1979 c 141 § 328; 1959 c 26 § 74.08.280. Prior: 1953 c 174 § 40; 1937 c 156 § 7; 1935 c 182 § 10; RRS § 9998-10.]

74.08.283 Services provided to attain self-care. The department is authorized to provide such social and related services as are reasonably necessary to the end that applicants for or recipients of public assistance are helped to attain self-care. [1963 c 228 § 16; 1959 c 26 § 74.08.283. Prior: 1957 c 63 § 6.]

74.08.290 Suspension of payments. The department is hereby authorized to suspend temporarily the public assistance granted to any person for any period during which such person is not in need thereof.

If a recipient is convicted of any crime or offense, and punished by imprisonment, no payment shall be made during the period of imprisonment. [1959 c 26 § 74.08.290. Prior: 1953 c 174 § 38; 1935 c 182 § 12; RRS § 9998-12.]

74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties. Any person who by means of a wilfully false statement, or representation, or impersonation, or a wilful failure to reveal any material fact, condition or circumstance affecting eligibility of need for assistance, including medical care, surplus commodities and food stamps, as required by law, or a wilful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, or any other change in circumstances affecting his eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which he is not entitled or greater public assistance than that to which he is justly entitled shall be guilty of grand larceny and upon conviction thereof shall be punished by imprisonment in the state penitentiary for not more than fifteen years.

Any person who by means of a wilfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than one year in the county jail or a fine of not to exceed one thousand dollars or by both. [1979 c 141 § 329; 1965 ex.s. c 34 § 1.]

74.08.335 Transfers of property to qualify for assistance. Public assistance shall not be granted under this title to any person who has made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this title. Any person who shall have transferred or shall transfer any real or personal property or any interest in property within two years of the date of application for public assistance without receiving adequate monetary consideration therefor, or any person who after becoming a recipient transfers any property or any interest in property without the consent of the secretary, shall be ineligible for public assistance for a period of time during which the reasonable value of the property so transferred would

have been adequate to meet his needs under normal conditions of living: *Provided*, That the secretary is hereby authorized to allow exceptions in cases where undue hardship would result from a denial of assistance. [1979 c 141 § 330; 1959 c 26 § 74.08.335. Prior: 1953 c 174 § 33.]

74.08.338 Real property transfers for inadequate consideration—Recovery of assistance payments. When the consideration for a deed executed and delivered by a recipient is not paid, or when the consideration does not approximate the fair cash market value of the property, such deed shall be prima facie fraudulent as to the state. The attorney general upon request of the secretary shall file suit to rescind such transaction except as to subsequent bona fide purchasers for value. In the event that it be established by judicial proceedings that a fraudulent conveyance occurred, the value of any public assistance which may have been furnished may be recovered in any proceedings from the recipient or his estate. [1979 c 141 § 331; 1959 c 26 § 74.08.338. Prior: 1953 c 174 § 37.]

74.08.340 No vested rights conferred. All assistance granted under this title shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be enacted, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act. [1959 c 26 § 74.08.340. Prior: 1935 c 182 § 21; RRS § 9998–21.]

74.08.370 Old age assistance grants charged against general fund. All old age assistance grants under this title shall be a charge against and payable out of the general fund of the state. Payment thereof shall be by warrant drawn upon vouchers duly prepared and verified by the secretary of the department of social and health services or his official representative. [1973 c 106 § 33; 1959 c 26 § 74.08.370. Prior: 1935 c 182 § 24; RRS § 9998–24. FORMER PART OF SECTION: 1935 c 182 § 25; RRS § 9998–25, now codified as RCW 74.08.375.]

74.08.380 Acceptance of federal act. The state hereby accepts the provisions of that certain act of the congress of the United States entitled, An Act to provide for the general welfare by establishing a system of federal old age benefits, and by enabling the several states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a social security board; to raise revenue; and for other purposes, and such other act with like or similar objects as may be enacted. [1959 c 26 § 74.08.380. Prior: 1937 c 156 § 12; 1935 c 182 § 26; RRS § 9998–26.]

74.08.390 Research, projects, to effect savings by restoring self-support—Waiver of public assistance requirements. The department of social and health services

may conduct research studies, pilot projects, demonstration projects, surveys and investigations for the purpose of determining methods to achieve savings in public assistance programs by means of restoring individuals to maximum self-support and personal independence and preventing social and physical disablement, and for the accomplishment of any of such purposes may employ consultants or enter into contracts with any agency of the federal, state or local governments, nonprofit corporations, universities or foundations.

Pursuant to this authority the department may waive the enforcement of specific statutory requirements, regulations, and standards in one or more counties or on a state-wide basis by formal order of the secretary. The order establishing the waiver shall provide alternative methods and procedures of administration, shall not be in conflict with the basic purposes, coverage, or benefits provided by law, shall not be general in scope but shall apply only for the duration of such a project and shall not take effect unless the secretary of health, education and welfare of the United States has agreed, for the same project, to waive the public assistance plan requirements relative to state-wide uniformity. [1979 c 141 § 332; 1969 ex.s. c 173 § 7; 1963 c 228 § 17.]

74.08.530 Homemaker-home health, chore, and personal and household services—Legislative finding. The legislature finds that it is desirable to provide certain services for certain citizens in order that such persons may remain in their own homes and maintain a closer contact with the community. Such a program will seek to prevent mental and psychological deterioration which our citizens might otherwise experience. [1973 1st ex.s. c 51 § 1.]

74.08.540 Homemaker-home health, chore, and personal and household services—Definitions—Purpose—Eligible persons. (1) The term "services" shall include homemaker-home health services, chore services and personal and household services.

(2) The goal of the homemaker-home health service within the department of social and health services shall be to maintain, strengthen, improve and safeguard home and family life by augmenting professional services in homes where there are social and/or health needs which interfere with the independent functioning of an individual or family.

The principal purpose of the homemaker-home health service shall be:

(a) To keep the family together while the natural homemaker is incapacitated, either in or out of the home; and to prevent family breakdown for any other reason, thus avoiding the shock of separating children from their parents, their brothers and sisters, their schools, their friends.

(b) To enable the elderly, the chronically ill, the mentally ill, retarded, or otherwise disabled individual to remain in or return to his own home among familiar surroundings whenever possible in accordance with RCW 74.08.283.

(c) To permit an individual to remain at home, or, to return home sooner than he otherwise could from an institution. This will allow for more appropriate utilization of hospitals, nursing homes, and other facilities. It will help offset the cost of expensive institutional care for the family, the individual and the community.

(d) To keep the employed adult on the job who otherwise must take unscheduled time off to care for children, an elderly parent, or an ill relative.

(e) To help individuals and families learn better management of daily living, including improved child-rearing practices and self-care.

(3) Housekeeping service shall mean service primarily concerned with the performance of household tasks and the physical care of small children where required. Housekeeping services do not include the assumption of parental duties normally associated with the direction and management of children.

Housekeeping service is an additional requirement when the normal caretaker of the children:

(a) Is in the home (except for a temporary period) and retains responsibility for direction and management of the children;

(b) Is in the home but is physically unable to perform the necessary household services and/or physical care of children without assistance; and

(c) Is not available and there is no person available to render the service without cost.

(4) Chore services includes the provision of household and personal care as needed to give attention and protection for the client's safety and well-being.

Chore services means services in performing light work, household tasks or personal care which eligible persons are unable to do for themselves because of frailty or other conditions. Chore services include, but are not limited to assisting in keeping client and home neat and clean, preparation of meals, help in shopping, lawn care, simple household repairs, running errands, wood chopping, and other tasks as required.

Eligible persons shall be recipients of old age assistance, aid to the blind, disability assistance, and general assistance to the unemployable who are potential disability assistance recipients, nonrecipients sixty-five years old or over released from a mental institution who are eligible for medical assistance under the state's Title XIX plan, and those potential recipients who would otherwise be eligible for public assistance if the cost of this service were an additional grant requirement. [1973 1st ex.s. c 51 § 2.]

74.08.550 Homemaker-home health, chore, and personal and household services—Department to develop program. The department of social and health services is authorized to develop a program to provide for those services enumerated in RCW 74.08.540. [1973 1st ex.s. c 51 § 3.]

74.08.560 Homemaker-home health, chore, and personal and household services—Employment of public assistance recipients. In developing the program set forth in RCW 74.08.550, the department shall, to the extent

possible, and consistent with federal law, enlist the services of persons receiving grants under the provisions of chapter 74.08 RCW and chapter 74.12 RCW to carry out the services enumerated under RCW 74.08.540 herein. To this end, the department shall establish appropriate rules and regulations designed to determine eligibility for employment under this section, as well as regulations designed to notify persons receiving such grants of eligibility for such employment. The department shall further establish a system of compensation to persons employed under the provisions of this section which provides that any grants they receive under chapter 74.08 RCW or chapter 74.12 RCW shall be diminished by such percentage of the compensation received under this section as the department shall establish by rules and regulations. [1973 1st ex.s. c 51 § 4.]

Chapter 74.09 MEDICAL CARE

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74.09.010 Definitions. As used in this chapter:

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

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

(3) "Internal management" means the administration of medical and related services to recipients of public assistance and medical indigent persons.

(4) "Medical indigents" are persons without income or resources sufficient to secure necessary medical services.

(5) "Nursing home" means nursing home as defined in RCW 18.51.010. [1979 c 141 § 333; 1959 c 26 § 74.09.010. Prior: 1955 c 273 § 2.]

74.09.020 Declaration of purpose. The purpose of this chapter is to provide for more efficient administration of medical, dental and allied services to recipients of public assistance and medical indigent persons. [1959 c 26 § 74.09.020. Prior: 1955 c 273 § 3.]

74.09.030 Responsibility to provide medical care. Administrative responsibility for providing for needed medical, dental and allied services to recipients of public assistance and medical indigents shall be the responsibility of the department. [1979 c 141 § 334; 1959 c 26 § 74.09.030. Prior: 1955 c 273 § 4.]

74.09.050 Secretary's responsibilities and duties—Personnel—Medical screeners. The secretary shall appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter. The medical screeners shall be supervised by one or more physicians who shall be appointed by the secretary or his designee. [1979 c 141 § 335; 1959 c 26 § 74.09.050. Prior: 1955 c 273 § 6.]

74.09.070 Eligibility of public assistance recipients and medical indigents. The determination of eligibility of recipients for public assistance shall be the responsibility of the department.

Recipients of public assistance shall be entitled to such medical services as are defined by the secretary.

The determination of eligibility of medical indigents shall be the responsibility of the department. The department is empowered to employ the necessary personnel to carry out the standards established. [1979 c 141 § 336; 1959 c 26 § 74.09.070. Prior: 1955 c 273 § 8.]

74.09.075 Evaluation of employability when medical condition represented—Medical reports—Medical consultations and assistance. The department shall provide (a) for evaluation of employability when a person is applying for public assistance representing a medical condition as a basis for need, and (b) for medical reports to be used in the evaluation of total and permanent disability. It shall further provide for medical consultation and assistance in determining the need for special diets, housekeeper and attendant services, and other requirements as found necessary because of the medical condition under the rules promulgated by the secretary. [1979 c 141 § 337; 1967 ex.s. c 30 § 2.]

74.09.080 Methods of performing administrative responsibilities. In carrying out the administrative responsibility of this chapter, the department may contract with an individual or a group, may utilize existing local state public assistance offices, or establish separate welfare medical care offices on a county or multicounty unit basis as found necessary. [1979 c 141 § 338; 1959 c 26 § 74.09.080. Prior: 1955 c 273 § 9.]

74.09.110 Administrative personnel—Professional consultants and screeners. The department shall employ administrative personnel in both state and local offices and employ the services of professional screeners and consultants as found necessary to carry out the proper administration of the program. [1979 c 141 § 339; 1959 c 26 § 74.09.110. Prior: 1955 c 273 § 12.]

74.09.120 Purchases of services, care, supplies—Regulations—Inspection. The department shall purchase necessary physician and dentist services by contract or "fee for service." The department shall purchase hospital care by contract or by all inclusive day rate, or at a reasonable cost based on a ratio of charges to cost. Any hospital when requested by the department shall supply such information as necessary to justify its rate, charges or costs. All additional services provided by the hospital shall be purchased at rates established by the department after consultation with the hospital. The department shall purchase nursing home care by contract. The department shall establish regulations for reasonable nursing home accounting and reimbursement systems which recognize relevant cost related factors for department of social and health services patients, including but not limited to the scope or level of services or care, requirements of staff, and physical plant, and a reasonable rate of return on investment; said formula shall provide that no payment shall be made to a nursing home which does not permit inspection by the department of social and health services of every part of its premises and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the department deems relevant to the establishment of such a system.

All other services and supplies provided under the program shall be secured by contract. [1975 1st ex.s. c

213 § 1; 1967 ex.s. c 30 § 1; 1959 c 26 § 74.09.120. Prior: 1955 c 273 § 13.]

Purchasing by state departments: RCW 43.19.200.

74.09.150 Personnel to be under existing merit system. All personnel employed in the administration of the medical care program shall be covered by the existing merit system under the state personnel board or its successor. [1959 c 26 § 74.09.150. Prior: 1955 c 273 § 16.]

State civil service law: Chapter 41.06 RCW.

74.09.160 Presentment of charges by contractors—Revolving funds. Each vendor or group who has a contract and is rendering service to eligible persons as defined in this chapter shall submit such charges as agreed upon between the department and the individual or group on a monthly basis and shall present their final charges not more than one hundred twenty days after the termination of service. If the final charges are not presented within the one hundred twenty-day period they shall not be a charge against the state unless previous extension in writing has been given by the department. Said one hundred twenty-day period may also be extended by regulation, but only if required by applicable federal law or regulation, and to no more than the extension of time so required.

The department is authorized to set up a medical prepayments revolving fund, or funds, to be used solely for the payment of medical care. Deposits into this fund or these funds shall be made from the appropriation for medical care. Such deposits shall be based upon a per capita amount per beneficiary, said amounts to be determined by the department from time to time. The department may set up such fund or funds to cover any one, several, or all items of the medical care costs of one, several, or all public assistance programs as deemed most advantageous by the secretary for the best interests of the state: *Provided*, That in the event such fund, or funds is, or are dissolved, the federal government shall be reimbursed for its proportionate share of contributions into such fund or funds. [1979 1st ex.s. c 81 § 1; 1973 1st ex.s. c 48 § 1; 1959 c 26 § 74.09.160. Prior: 1955 c 273 § 17.]

74.09.170 Availability of records and reports of department. All of the records and reports of the department of social and health services relative to the administration of the program covered by this chapter shall be available to the governor's advisory committee on vendor rates, subject to all restrictions of confidentiality of RCW 74.04.060. [1979 c 141 § 340; 1959 c 26 § 74.09.170. Prior: 1955 c 273 § 18.]

74.09.170 Availability of records and reports of department. [1959 c 26 § 74.09.170. Prior: 1955 c 273 § 18.] Repealed by 1979 c 141 § 386.

Reviser's note: RCW 74.09.170 was amended and repealed during the 1979 regular session of the legislature, each without reference to the other.

74.09.180 Chapter does not apply where another party liable—Exception—Subrogation—Lien—Recovery—Settlement. The provisions of this chapter

shall not apply to recipients whose personal injuries are occasioned by negligence or wrong of another: *Provided, however*, That the secretary of the department of social and health services may, in his discretion, furnish assistance, under the provisions of this chapter, for the results of injuries to or illness of a recipient, and the department of social and health services shall thereby be subrogated to the recipient's right of recovery therefor to the extent of the value of the assistance furnished by the department of social and health services: *Provided further*, That to the end of securing reimbursement of any assistance furnished to such a recipient, the department of social and health services may, as a nonexclusive legal remedy, assert and enforce a lien upon any claim, right of action, and/or money, including any claim for benefits arising from an insurance program, to which such recipient is entitled (a) against any tortfeasor and/or insurer of such tortfeasor, or (b) any contract of insurance, purchased by the recipient or any other person, providing coverage to such recipient for said injuries, any illness, dental costs, costs incident to birth, or any other coverage for purposes of or costs for which the department provides assistance or meets all or part of the cost of care to a vendor, to the extent of the assistance furnished by said department to the recipient. If a recovery shall be made and the subrogation or lien is satisfied either in full or in part as a result of an independent action initiated by or on behalf of a recipient to recover the personal injuries against any tortfeasor or insurer, then and in that event the amount repaid to the state of Washington as a result of said action, whether concluded by entry of a judgment or compromise and settlement, shall bear its proportionate share of attorney's fees and costs incurred by the injured recipient or his widow, children, or dependents, as the case may be, to the extent that such attorney's fees and costs are approved by the court in which the action is initiated, and upon notice to the department which shall have the right to be heard on the matter. [1979 1st ex.s. c 171 § 14; 1971 ex.s. c 306 § 1; 1969 ex.s. c 173 § 8; 1959 c 26 § 74.09.180. Prior: 1955 c 273 § 19.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.09.182 Chapter does not apply where another party liable—Statement of lien—Form. The form of the lien in RCW 74.09.180 shall be substantially as follows:

STATEMENT OF LIEN

Notice is hereby given that the State of Washington, Department of Social and Health Services, has rendered assistance to _____, a person who was injured on or about the _____ day of _____ in the county of _____ state of _____, and the said department hereby asserts a lien, to the extent provided in RCW 74.09.180, for the amount of such assistance, upon any sum due and owing _____ (name of injured person) from _____, alleged to have caused the injury, and/or his insurer and from any other person

or insurer liable for the injury or obligated to compensate the injured person on account of such injuries by contract or otherwise.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

By: _____ (Title)

STATE OF WASHINGTON }
COUNTY OF } ss.

I, _____, being first duly sworn, on oath state: That I am _____ (title); that I have read the foregoing Statement of Lien, know the contents thereof, and believe the same to be true.

Subscribed and sworn to before me this _____ day of _____, 19__.

Notary Public in and for the State of Washington, residing at _____

[1979 c 141 § 341; 1969 ex.s. c 173 § 9.]

74.09.184 Chapter does not apply where another party liable—Lien effective upon being filed. The lien created in RCW 74.09.180 shall become effective upon being filed with the county auditor of the county in which the assistance was authorized by the department. [1969 ex.s. c 173 § 10.]

74.09.186 Chapter does not apply where another party liable—Settlement between recipient and tortfeasor and/or insurer—Lien not discharged—Exceptions. No settlement made by and between the recipient and tortfeasor and/or insurer shall discharge the lien created in RCW 74.09.180, against any money due or owing by such tortfeasor or insurer to the recipient or relieve the tortfeasor and/or insurer from liability by reason of such lien unless such settlement also provides for the payment and discharge of such lien or unless a written release or waiver of such claim or lien, signed by the department, be filed in the court where any action has been commenced on such claim, or in case no action has been commenced against the tortfeasor and/or insurer, then such written release or waiver shall be delivered to the tortfeasor or insurer. [1969 ex.s. c 173 § 12.]

74.09.190 Construction of chapter—Religious beliefs. Nothing in this chapter shall be construed as empowering the secretary to compel any recipient of public assistance and a medical indigent person to undergo any physical examination, surgical operation, or accept any form of medical treatment contrary to the wishes of said person who relies on or is treated by prayer or spiritual means in accordance with the creed and tenets of any well recognized church or religious denomination. [1979 c 141 § 342; 1959 c 26 § 74.09.190. Prior: 1955 c 273 § 23.]

74.09.200 Legislative intent—Policy. The legislature finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the providing of medical, dental, and other health services to recipients of public assistance and medically indigent persons. In order to effectively accomplish such purpose and to assure that the recipient of such services receives such services as are paid for by the state of Washington, the acceptance by the recipient of such services, and by practitioners of reimbursement for performing such services, shall authorize the secretary of the department of social and health services or his designee, to inspect and audit all records in connection with the providing of such services. [1979 1st ex.s. c 152 § 1.]

74.09.210 Fraudulent practices—penalties. (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or others, obtain or attempt to obtain benefits or payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A wilful false statement;
(b) By wilful misrepresentation, or by concealment of any material facts; or
(c) By other fraudulent scheme or device, including, but not limited to:
(i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or
(ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, plus interest on the amount of the excess benefits or payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The secretary of social and health services may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: Provided, That these civil penalties shall not apply to any acts or omissions occurring prior to the effective date of this act.

(3) All orders of the department assessing civil penalties shall become final twenty days after the same have been served unless a hearing is requested.

(4) A criminal action need not be brought against a person for that person to be civilly liable under this section.

(5) In all proceedings under this section, service, hearings, and judicial review of such determinations shall be in accordance with chapter 34.04 RCW.

(6) Civil penalties shall be deposited in the general fund upon their receipt. [1979 1st ex.s. c 152 § 2.]

74.09.220 Liability for receipt of excess payments.

Any person, firm, corporation, partnership, association, agency, institution or other legal entity, but not including an individual public assistance recipient of health care, that, without intent to violate this chapter, obtains benefits or payments under this code to which such person or entity is not entitled, or in a greater amount than that to which entitled, shall be liable for (1) any excess benefits or payments received, and (2) interest on the amount of the excess benefits or payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state: *Provided*, That no person, firm, corporation, partnership, association, agency, institution, or other legal entity shall be liable for payment of interest when excess benefits or payments were obtained as a result of errors made by the department of social and health services. Whenever a penalty or interest is due under RCW 74.09.210 or 74.09.220, such penalty or interest shall not be reimbursable by the state as an allowable cost under any of the provisions of this chapter. [1979 1st ex.s. c 152 § 3.]

74.09.230 False statements, fraud—Penalties. Any person, including any corporation, that

(1) knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under any medical care program authorized under this chapter, or

(2) at any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment, or

(3) having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized,

shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1979 1st ex.s. c 152 § 4.]

74.09.240 Bribes, kickbacks, rebates—Penalties.

(1) Any person, including any corporation, that solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind

(a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter, or

(b) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this

chapter,

shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(2) Any person, including any corporation, that offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person

(a) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter, or

(b) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter,

shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(3) Subsections (1) and (2) of this section shall not apply to

(a) a discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter, and

(b) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(4) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [1979 1st ex.s. c 152 § 5.]

74.09.250 False statements regarding institutions, facilities—Penalties. Any person, including any corporation, that knowingly makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, skilled nursing facility, intermediate care facility, or home health agency, shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than five thousand dollars. [1979 1st ex.s. c 152 § 6.]
74.09.260 Excessive charges, payments—Penalties. Any person, including any corporation, that knowingly

(1) charges, for any service provided to a patient under any medical care plan authorized under this chapter, money or other consideration at a rate in excess of the rates established by the department of social and health services, or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under such plan any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)

(a) as a precondition of admitting a patient to a hospital, skilled nursing facility, or intermediate care facility, or

(b) as a requirement for the patient's continued stay in such facility,

when the cost of the services provided therein to the patient is paid for, in whole or in part, under such plan, shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1979 1st ex.s. c 152 § 7.]

74.09.270 Failure to maintain trust funds in separate account—Penalties. (1) Any person having any patient trust funds in his possession, custody, or control, who, knowing that he is violating any statute, regulation, or agreement, deliberately fails to deposit, transfer, or maintain said funds in a separate, designated, trust bank account as required by such statute, regulation, or agreement shall be guilty of a gross misdemeanor and shall be punished by imprisonment for not more than one year in the county jail, or by a fine of not more than ten thousand dollars or as authorized by RCW 9A.20.030, or by both such fine and imprisonment.

(2) "Patient trust funds" are funds received by any health care facility which belong to patients and are required by any state or federal statute, regulation, or by agreement to be kept in a separate trust bank account for the benefit of such patients.

(3) This section shall not be construed to prevent a prosecution for theft. [1979 1st ex.s. c 152 § 8.]

74.09.280 False verification of written statements—Penalties. The secretary of social and health services may by rule require that any application, statement, or form filled out by suppliers of medical care under this chapter shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or misleading information may be prosecuted and punished under chapter 9A.72 RCW. [1979 1st ex.s. c 152 § 9.]

74.09.290 Department audits and investigations—Authority to subpoena—Other powers. The secretary of the department of social and health services or his authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical and other services furnished pursuant to this chapter, except that the Washington state medical disciplinary board shall generally serve in an advisory capacity to the secretary in the conduct of audits or investigations of physicians. In the conduct of such audits or investigations, the secretary may examine only

those records or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the department, notwithstanding the provisions of RCW 5.60.060, 18.53.200, 18.83.110, or any other statute which may make or purport to make such records privileged or confidential: *Provided*, That no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information by the department of social and health services is prohibited and constitutes a violation of RCW 42.22.040, unless such disclosure is directly connected to the official purpose for which the records or information were obtained: *Provided further*, That the disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative, or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained: *Provided further*, That the secretary shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation or proceedings;

(2) Issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the state of Washington as now provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents, and testimony relevant to such investigation. If a person in attendance before such secretary or his authorized representative refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper or other evidence when ordered to do so by the secretary or his authorized representative, said secretary or his authorized representative may apply to the judge of the superior court of the county where such person is in attendance, upon affidavit, for an order returnable in not less than two nor more than five days, directing such person to show cause before such judge, or any other judge of such county, why he should not produce such records. Upon the hearing of such order, if the judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, he may forthwith punish the offender for contempt of court. Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the superior courts of this state;

(3) Approve or deny applications to participate as a provider of services furnished pursuant to this chapter;

(4) Terminate or suspend eligibility to participate as a provider of services furnished pursuant to this chapter; and

(5) Adopt, promulgate, amend, and rescind administrative rules and regulations, in accordance with the administrative procedure act, chapter 34.04 RCW, to carry out the policies and purposes of RCW 74.09.200 through 74.09.290. [1979 1st ex.s. c 152 § 10.]

74.09.300 Department to report penalties to appropriate licensing agency or disciplinary board. Whenever the secretary of the department of social and health services imposes a civil penalty under RCW 74.09.210, or terminates or suspends a provider's eligibility under RCW 74.09.290, he shall, if the provider is licensed pursuant to Titles 18, 70, or 71 RCW, give written notice of such imposition, termination, or suspension to the appropriate licensing agency or disciplinary board. [1979 1st ex.s. c 152 § 11.]

74.09.500 Medical assistance—Established. There is hereby established a new program of federal-aid assistance to be known as medical assistance to be administered by the state department of social and health services. The department of social and health services is authorized to comply with the federal requirements for the medical assistance program provided in the Social Security Act and particularly Title XIX of Public Law (89-97) in order to secure federal matching funds for such program. [1979 c 141 § 343; 1967 ex.s. c 30 § 3.]

74.09.510 Medical assistance—Qualifications of applicants. Medical assistance may be provided in accordance with eligibility requirements established by the department of social and health services to an applicant: (1) Who is in need; (2) who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; (3) who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a county or city jail or juvenile detention facility, or except as an inmate in a public institution who could qualify for federal aid assistance; and (4) who is a resident of the state of Washington. [1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

74.09.520 Medical assistance—Care and services included. The term "medical assistance" may include the following care and services: (1) Inpatient hospital services; (2) outpatient hospital services; (3) other laboratory and x-ray services; (4) skilled nursing home services; (5) physicians' services, which shall include prescribed medication and instruction on birth control devices; (6) medical care, or any other type of remedial care as may be established by the secretary; (7) home health care services; (8) private duty nursing services; (9) dental services; (10) physical therapy and related services; (11) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (12) other diagnostic, screening, preventive, and rehabilitative services. [1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

74.09.530 Medical assistance—Powers and duties of department. The amount and nature of medical assistance and the determination of eligibility of recipients for medical assistance shall be the responsibility of the department of social and health services. The department shall establish reasonable standards of assistance and resource and income exemptions which shall be

consistent with the provisions of the Social Security Act and with the regulations of the secretary of health, education and welfare for determining eligibility of individuals for medical assistance and the extent of such assistance to the extent that funds are available from the state and federal government. [1979 c 141 § 345; 1967 ex.s. c 30 § 6.]

74.09.550 Nursing homes, reports, audits, rates—Legislative declaration. The legislature finds that reliability of financial information is dependent upon the application of generally accepted accounting principles and adherence to published rules of the department of social and health services. To assure that these accounting principles and rules are being applied to reports submitted by nursing homes, the legislature finds it necessary to require certain reports submitted by nursing homes to be audited by the department of social and health services in the manner prescribed in RCW 74.09.560 and 74.09.570. [1977 ex.s. c 260 § 1.]

Severability—1977 ex.s. c 260: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 260 § 8.] This applies to RCW 74.09.550 through 74.09.600.

74.09.560 Nursing homes—Annual cost reports to be audited by department of social and health services. All annual cost reports submitted to the state by a nursing home shall be audited annually through a field audit conducted by auditors under contract with or employed by the department of social and health services. The secretary of the department of social and health services shall establish an audit manual and program which shall require that all audits, conducted either through contract or by department employees:

(1) Comply with generally accepted auditing standards prescribed by the American institute of certified public accountants;

(2) Include a written opinion as to whether allowable costs included in the report are presented fairly in accordance with generally accepted accounting principles and department rules, and whether, in all material respects, allowable costs are documented, reasonable, and related to patient care;

(3) Are conducted by accounting firms or auditors who, during the period of the auditors' professional engagement or employment and during the period covered by the financial statements, do not have nor are committed to acquire any direct or indirect financial interest in the ownership, financing, or operation of a nursing home in this state;

(4) Are conducted by accounting firms or auditors who, as a condition of the contract or employment, are not allowed to have nursing home clients during or within two years of termination of their contract or employment;

(5) Are conducted by auditors who are otherwise independent as determined by the standards of independence established by the American institute of certified public accountants;

(6) Are supervised by a certified public accountant;

(7) Are completed within one year after the annual cost report is submitted by the nursing home; and

(8) Provide to the nursing home complete written interpretations which explain in detail the application of all relevant contract provisions, regulations, auditing standards, rate formulae, and departmental policies, with explanations and examples, and which are sufficient to permit the nursing home to calculate with reasonable certainty those costs which are allowable and the settlement to which the nursing home is entitled. [1977 ex.s. c 260 § 2.]

Severability—1977 ex.s. c 260: See note following RCW 74.09.550.

74.09.570 Audit disallowances—Procedures—Availability of certain information on nursing homes. (1) The department of social and health services shall prepare a written summary of any audit disallowance which exceeds five hundred dollars. Where the department pays rates or proposes settlement of accounts at less than the nursing home's actual reported costs, which have been verified by audit, the department shall for each cost center, as determined under department rules, advise the nursing home management of the rules and regulations justifying reimbursement at less than actual cost. Where the nursing home is pursuing judicial or administrative remedies in good faith regarding reimbursement settlement issues the department shall not withhold from the nursing home current payment amounts the department claims to be due from the nursing home.

(2) All financial reports and information submitted by nursing homes to the department of social and health services and all final audit narratives and summaries reviewing the submitted material shall be available for public inspection. By December 31, 1979, all nursing homes shall submit annual cost reports based on their federal tax year, which shall coincide with a common fiscal year as determined by the secretary of the department of social and health services.

(3) The department shall, without identifying individual nursing homes, make available to the public full information regarding its cost-finding and rate-setting methodology for nursing home care. The information shall include, but not necessarily be limited to, the following:

(a) Ranges, averages, and median costs for all cost centers;

(b) Departmental budget projections which reflect probable economic trends;

(c) Computer models and programs, with related documentation sufficient to explain them, used or proposed by the department to evaluate cost reports, establish cost projections, establish rates, or, in whole or in part, determine settlements; and

(d) All raw data relied upon by the department for any such cost-finding or rate-setting activities.

The department shall, prior to April 1 of each year, file with the senate ways and means and house appropriations committees, and make available to the public, a comprehensive report concerning all of the above matters. [1977 ex.s. c 260 § 3.]

Severability—1977 ex.s. c 260: See note following RCW 74.09.550.

74.09.580 Nursing home payment system—Individually-based and class-based rates—Refunds. The nursing home payment system under this chapter shall provide for individually-based or class-based rates which shall be the maximum reimbursement for each nursing home for the period for which the rates are assigned. Operators of nursing homes shall refund all portions of payments received which exceed actual audited costs and all portions of payments received which are attributable to unreasonable or nonallowable costs as determined by federal or state regulations. [1977 ex.s. c 260 § 4.]

Severability—1977 ex.s. c 260: See note following RCW 74.09.550.

74.09.590 Payment rates—Conditions. Payment rates shall:

(1) Not be set lower prospectively than the level which may reasonably be expected to reimburse in full for actual allowable costs under federal regulations for a nursing home which is economically and efficiently operated;

(2) Realistically take into account economic conditions and trends during the time period covered by the rates;

(3) Be at least annually redetermined;

(4) Permit as allowable those expenses necessary to meet all items of expense which operators of nursing homes must incur to provide federally defined skilled or intermediate care services;

(5) Meet the reasonable cost of patient assessment activity as required by the department; and

(6) Meet the reasonable cost of accounting requirements.

Reasonable costs shall be determined independently of the level of funding available, in accordance with federal regulations and guidelines. [1977 ex.s. c 260 § 5.]

Severability—1977 ex.s. c 260: See note following RCW 74.09.550.

74.09.600 Post audit examinations by state auditor. Nothing in this chapter shall preclude the state auditor from conducting post audit examinations of public funds pursuant to RCW 43.09.330 or other applicable law. [1977 ex.s. c 260 § 6.]

Severability—1977 ex.s. c 260: See note following RCW 74.09.550.

74.09.900 Other laws applicable. All the provisions of Title 74 RCW, not otherwise inconsistent herewith, shall apply to the provisions of this chapter. [1959 c 26 § 74.09.900. Prior: 1955 c 273 § 22.]

74.09.910 Severability—1979 1st ex.s. c 152. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 1st ex.s. c 152 § 12.]

Chapter 74.10
DISABILITY ASSISTANCE

Sections

74.10.010	Disability assistance—Administration—Intent.
74.10.020	Eligibility.
74.10.030	Amount of assistance—Dependents.
74.10.070	Restoration to health and independence—Services provided.
74.10.090	Department authorized to disregard part of income of recipients as resource.
74.10.100	Intent and purpose of chapter.

Determination of disability—Old age and survivors' insurance: RCW 43.17.120, 43.17.130.

74.10.010 Disability assistance—Administration—Intent. There is hereby created a new category of federal aid assistance to be known as disability assistance to be administered on a uniform state-wide basis by the state department of social and health services. The legislature hereby expresses its intention to comply with the federal requirements under the provisions of public law 734 (64 Statutes at Large 548) creating a new category of assistance in order to secure federal matching funds for such a program. [1979 c 141 § 346; 1959 c 26 § 74.10.010. Prior: 1951 c 176 § 1.]

74.10.020 Eligibility. In addition to the eligibility requirements under RCW 74.08.025, as now or hereafter amended, disability assistance grants will be awarded on a uniform state-wide basis to an applicant who is:

(1) Permanently and totally disabled as defined by the state department of social and health services and such definition is approved by the federal security agency for federal matching funds, and

(2) Eighteen years of age or over, and

(3) Is a resident of the state of Washington, and

(4) Willing to submit himself to such examinations as are deemed necessary by the state department of social and health services to establish the extent and nature of his disability. [1971 ex.s. c 169 § 5; 1959 c 26 § 74.10.020. Prior: 1953 c 174 § 25; 1951 c 176 § 2.]

74.10.030 Amount of assistance—Dependents. In determining the amount of assistance to which an eligible applicant or recipient shall be entitled, the department of social and health services is authorized to include the needs of such applicant's or recipient's legal dependents if they are not concurrently receiving another type of public assistance. [1979 c 141 § 347; 1959 c 26 § 74.10.030. Prior: 1951 c 176 § 3.]

74.10.070 Restoration to health and independence—Services provided. The department is authorized to provide through employment of properly qualified personnel such social and related services as are found necessary for proper administration of this chapter and to the end that applicants for or recipients of disability assistance are helped to attain self-care and/or self-support by effective use of all resources for rehabilitation and restoration to health and independence. The department of social and health services shall refer recipients who can be benefited thereby to the appropriate public and private resources for rehabilitation

through retraining, restorative services, treatment and therapy. [1979 c 141 § 348; 1959 c 26 § 74.10.070. Prior: 1957 c 63 § 7; 1951 c 176 § 7.]

74.10.090 Department authorized to disregard part of income of recipients as resource. The department of social and health services is authorized to disregard as income of every eligible recipient of disability assistance under the provisions of this chapter an amount not exceeding fifty dollars of the first eighty dollars earned in any single month by such recipient as follows:

(1) The first twenty dollars earned by any eligible recipient is wholly exempt, and shall not be considered as a resource within the definition and application of this title;

(2) Fifty percent of any amount earned by such eligible recipient in excess of twenty dollars but not exceeding eighty dollars, is exempt to such eligible recipient and shall not be considered as a resource within the definition and application of this title;

(3) Every earned amount in excess of eighty dollars shall be considered a resource within the meaning of this title. [1979 c 141 § 349; 1967 ex.s. c 60 § 1.]

74.10.100 Intent and purpose of chapter. It is the intent and purpose of this chapter that eligible recipients of disability assistance be given rehabilitation incentives by which they may make a better life for themselves and for their families, and in order that they may contribute productive energies benefiting the state and nation. [1967 ex.s. c 60 § 2.]

Chapter 74.12
AID TO FAMILIES WITH DEPENDENT CHILDREN

Sections

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Agencies—Children, expectant mothers, care, placement: Chapter 74.15 RCW.

Children and youth services: Chapter 72.05 RCW.

Division for handicapped children: Chapter 28A.13 RCW.

Enforcement of support of dependent children: Chapters 74.20 and 74.20A RCW.

Female and child labor: Chapter 49.12 RCW.

Sale or gift of tobacco or intoxicating liquor to minor is gross misdemeanor: RCW 26.28.080.

State schools for blind and deaf: Chapter 72.40 RCW.

74.12.010 Definitions. For the purposes of the administration of aid to families with dependent children assistance, the term "dependent child" means any child in need under the age of eighteen years who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of the parent, and who is with his father, mother, grandmother, grandfather, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their homes. The term a "dependent child" shall, notwithstanding the foregoing, also include a child who would meet such requirements except for his removal from the home of a relative specified above as a result of a judicial determination that continuation therein would be contrary to the welfare of such child, for whose placement and care the state department of social and health services or the county office is responsible, and who has been placed in a licensed or approved child care institution or foster home as a result of such determination and who: (1) Was receiving an aid to families with dependent children grant for the month in which court proceedings leading to such determination were initiated; or (2) would have received aid to families with dependent children for such month if application had been made therefor; or (3) in the case of a child who had been living with a specified relative within six months prior to the month in which such proceedings were initiated, would have received aid to families with dependent children for such month if in such month he had been living with such a relative and application had been made therefor, as authorized by the Social Security Act: *Provided*, That the secretary shall have discretion to provide that aid to families with dependent children assistance shall be available to any child in need who has been deprived of parental support or care by reason of the unemployment of a parent or stepparent liable under this chapter for the support of such child, to the extent that matching funds are available from the federal government.

"Aid to families with dependent children" means money payments, services, and remedial care with respect to a dependent child or dependent children and the needy parent or relative with whom the child lives and may include the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity or unemployment of a parent or stepparent liable under this chapter for the support of such child. [1979 c 141 § 350; 1973 2nd ex.s. c 31 § 1; 1969 ex.s. c 173 § 13; 1965 ex.s. c 37 § 1; 1963 c 228 § 18; 1961 c 265 § 1; 1959 c 26 § 74.12.010. Prior: 1957 c 63 § 10; 1953 c 174 § 24; 1941 c 242 § 1; 1937 c 114 § 1; Rem. Supp. 1941 § 9992-101.]

74.12.030 Eligibility. In addition to meeting the eligibility requirements of RCW 74.08.025, as now or hereafter amended, an applicant for aid to families with

dependent children must be a needy child who is a resident of the state of Washington. [1971 ex.s. c 169 § 6; 1963 c 228 § 19; 1959 c 26 § 74.12.030. Prior: 1953 c 174 § 23; 1941 c 242 § 2; 1937 c 114 § 4; Rem. Supp. 1941 § 9992-104.]

74.12.240 Services provided to help attain maximum self-support and independence of parents and relatives. The department is authorized to provide such social and related services as are reasonably necessary to encourage the care of dependent children in their own homes or in the homes of relatives, to help maintain and strengthen family life and to help such parents or relatives to attain maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. In the provision of such services, maximum utilization of other agencies providing similar or related services shall be effected. [1959 c 26 § 74.12.240. Prior: 1957 c 63 § 8.]

74.12.250 Payment of grant to another—Limited guardianship. If the department, after investigation, finds that any recipient of funds under an aid to families with dependent children grant is not utilizing the grant adequately for the needs of the child or children or is otherwise dissipating such grant, or is unable to manage adequately the funds paid on behalf of said child and that to continue said payments to him would be contrary to the welfare of the child, the department may make such payments to another individual who is interested in or concerned with the welfare of such child and relative: *Provided*, That the department shall provide such counseling and other services as are available and necessary to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family. Periodic review of each case shall be made by the department to determine if said relative is able to resume management of the assistance grant. If after a reasonable period of time the payments to the relative cannot be resumed, the department may request the attorney general to file a petition in the superior court for the appointment of a guardian for the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the department not less than ten days before the date set for such hearing. Such petition may be filed with the clerk of superior court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interest of the child or children, and all parties concerned, that a guardian be appointed, he shall order the appointment, and may require the guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such time as the court may deem advisable.

It is the intention of this section that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant, or sooner on order of the court,

upon good cause shown. [1963 c 228 § 21; 1961 c 206 § 1.]

74.12.260 Persons to whom grants shall be made—Proof of use for benefit of children. Aid to families with dependent children grants shall be made to persons specified in RCW 74.12.010 as amended or such others as the federal department of health, education and welfare shall recognize for the sole purposes of giving benefits to the children whose needs are included in the grant paid to such persons. The recipient of each aid to families with dependent children's grant shall be and hereby is required to present reasonable proof to the department of social and health services as often as may be required by the department that all funds received in the form of an aid to families with dependent children grant for the children represented in the grant are being spent for the benefit of the children. [1979 c 141 § 351; 1963 c 228 § 22.]

74.12.270 Protective payments subject to fair hearing and appeal procedure. The decision of the department that there is need for a protective payment because of the relative's inability to manage the assistance payment shall be subject to the provisions of RCW 74.08.070 and RCW 74.08.080. [1963 c 228 § 23.]

74.12.280 Rules and regulations for coordination of services. The department is hereby authorized to promulgate rules and regulations which will provide for coordination between the services provided pursuant to *RCW 74.12.130 and the services provided under the aid to families with dependent children program in order to provide welfare and related services which will best promote the welfare of such children and their families and conform with the provisions of Public Law 87-543 (HR 10606). [1963 c 228 § 24.]

*Reviser's note: "RCW 74.12.130" referred to above was repealed by 1965 c 30 § 5. For later enactment concerning child welfare services, see chapter 74.13 RCW.

74.12.290 Evaluation of suitability of home. The department of social and health services shall, during the initial and any subsequent determination of eligibility, evaluate the suitability of the home in which the dependent child lives, consideration to be given to physical care and supervision provided in the home; social, educational, and the moral atmosphere of the home as compared with the standards of the community; the child's physical and mental health and emotional security, special needs occasioned by the child's physical handicaps or illnesses, if any; the extent to which desirable factors outweigh the undesirable in the home; and the apparent possibility for improving undesirable conditions in the home. [1979 c 141 § 352; 1963 c 228 § 25.]

74.12.300 Grant during period required to eliminate undesirable conditions. If the home in which the child lives is found to be unsuitable, but there is reason to believe that elimination of the undesirable conditions can be effected, and the child is otherwise eligible for aid, a grant shall be initiated or continued for such time as the

state department of social and health services and the family require to remedy the conditions. [1979 c 141 § 353; 1963 c 228 § 26.]

74.12.310 Placement of child with other relatives. When intensive efforts over a reasonable period have failed to improve the home conditions, the department shall determine if any other relatives specified by the social security act are maintaining a suitable home and are willing to take the care and custody of the child in their home. Upon an affirmative finding the department shall, if the parents or relatives with whom the child is living consent, take the necessary steps for placement of the child with such other relatives, but if the parents or relatives with whom the child lives refuse their consent to the placement then the department shall file a petition in the juvenile court for a decree adjudging the home unsuitable and placing the dependent child with such other relatives. [1963 c 228 § 27.]

74.12.320 Placement of child pursuant to chapter 13.04 RCW. If a diligent search reveals no other relatives as specified in the social security act maintaining a suitable home and willing to take custody of the child, then the department may file a petition in the appropriate juvenile court for placement of the child pursuant to the provisions of chapter 13.04 RCW. [1963 c 228 § 28.]

74.12.330 Assistance not to be denied for want of relative or court order. Notwithstanding the provisions of this chapter a child otherwise eligible for aid shall not be denied such assistance where a relative as specified in the social security act is unavailable or refuses to accept custody and the juvenile court fails to enter an order removing the child from the custody of the parent, relative or guardian then having custody. [1963 c 228 § 29.]

74.12.340 Day care. The department is authorized to promulgate rules and regulations governing the provision of day care as a part of child welfare services when the secretary determines that a need exists for such day care and that it is in the best interests of the child, the parents, or the custodial parent and in determining the need for such day care priority shall be given to geographical areas having the greatest need for such care and to members of low income groups in the population: *Provided*, That where the family is financially able to pay part or all of the costs of such care, fees shall be imposed and paid according to the financial ability of the family. [1973 1st ex.s. c 154 § 111; 1963 c 228 § 30.]

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

Child welfare services: Chapter 74.13 RCW.

74.12.350 Department may promulgate rules to allow child's income to be set aside for future needs. The department of social and health services is hereby authorized to promulgate rules and regulations in conformity with the provisions of Public Law 87-543 to allow all or any portion of a dependent child's earned or other income to be set aside for the identifiable future needs of

the dependent child which will make possible the realization of the child's maximum potential as an independent and useful citizen. [1979 c 141 § 354; 1963 c 226 § 1.]

Chapter 74.13

CHILD WELFARE SERVICES

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74.13.010 Declaration of purpose. The purpose of this chapter is to safeguard, protect and contribute to

the welfare of the children of the state, through a comprehensive and coordinated program of public child welfare services providing for: Social services and facilities for children who require guidance, care, control, protection, treatment or rehabilitation; setting of standards for social services and facilities for children; cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children; and promotion of community conditions and resources that help parents to discharge their responsibilities for the care, development and well-being of their children. [1965 c 30 § 2.]

74.13.020 Definitions—"Child", "child welfare services". As used in Title 74 RCW, child welfare services shall be defined as public social services including adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(1) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(2) Protecting and caring for homeless, dependent, or neglected children;

(3) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children with services designed to resolve such conflicts;

(4) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(5) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

As used in this chapter, child means a person less than eighteen years of age. [1979 c 155 § 76; 1977 ex.s. c 291 § 21; 1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Appropriation—Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective date—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

74.13.031 Duties of department—Provision of child welfare services—Establishment of child welfare and day care advisory committee. The department shall have the duty to provide child welfare services as defined in RCW 74.13.020, and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of homeless, runaway, dependent, or neglected children.

(2) Develop a recruiting plan for recruiting an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, sibling groups, handicapped and emotionally disturbed, and annually submit the plan for review to the house and senate committees on social and

health services. The plan shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of neglect, abuse, or abandonment of children by parents, legal custodians, or persons serving in loco parentis, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. If the investigation reveals that a crime may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, crisis intervention to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report delineating the results to the house and senate committees on social and health services.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a child welfare and day care advisory committee who shall act as an advisory committee to the state advisory committee and to the secretary in the development of policy on all matters pertaining to child welfare, day care, licensing of child care agencies, and services related thereto.

(10) Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and RCW 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974 (P.L. No. 93-415; 42 U.S.C. 5634 et seq.; and 42 U.S.C. 5701 note as amended by P.L. 94-273, 94-503, and 95-115). [1979 1st ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Effective date—1979 1st ex.s. c 165: "Section 22 of this 1979 act is necessary for the immediate preservation of the public peace, health,

and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1979 1st ex.s. c 165 § 27.] Because of this emergency section, 1979 1st ex.s. c 165 § 22 became effective May 11, 1979.

Severability—1979 1st ex.s. c 165: See RCW 26.32.911.

Application—1979 1st ex.s. c 165: See RCW 26.32.915.

Effective date—**Severability**—1977 ex.s. c 291: See note following RCW 13.04.005.

Severability—1967 c 172: See note following RCW 74.15.010.

Abuse of child or adult developmentally disabled person, report, investigation: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and developmentally disabled persons: Chapter 74.15 RCW.

74.13.032 Crisis residential centers, regional and others, number—Establishment—Staff—Duties—Facilities semi-secure. (1) The department shall establish, by contracts with private vendors, not less than eight regional crisis residential centers, which shall be structured group care facilities licensed under rules adopted by the department. Each regional center shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children. The staff shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles, and carry out the responsibilities outlined in RCW 13.32A.090.

(2) The department shall, in addition to the regional facilities established under subsection (1) of this section, establish not less than thirty additional crisis residential centers pursuant to contract with licensed private group care or specialized foster home facilities. The staff at the facilities shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW 13.32A.090 may, in any of the centers, be carried out by the department.

Crisis residential facilities shall be operated as semi-secure facilities. [1979 c 155 § 78.]

Appropriation—**Effective date**—**Severability**—1979 c 155: See notes following RCW 13.04.011.

74.13.033 Crisis residential centers—Removal from, when—Services available—Unauthorized leave. (1) If a resident of a center becomes by his or her behavior disruptive to the facility's program, such resident may be immediately removed to a separate area within the facility and counseled on an individual basis until such time as the child regains his or her composure. The department may set rules and regulations establishing additional procedures for dealing with severely disruptive children on the premises, which procedures are consistent with the federal juvenile justice and delinquency prevention act of 1974 and regulations and clarifying instructions promulgated thereunder. Nothing in this section shall prohibit a center from referring any child who, as the result of a mental or emotional disorder, or intoxication by alcohol or other drugs, is suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency medical evaluation and possible care, to a

community mental health center pursuant to RCW 72.23.070 or to a mental health professional pursuant to chapter 71.05 RCW whenever such action is deemed appropriate and consistent with law.

(2) When the juvenile resides in this facility, all services deemed necessary to the juvenile's reentry to normal family life shall be made available to the juvenile as required by chapter 13.32A RCW. In providing these services, the facility shall:

(a) Interview the juvenile as soon as possible;

(b) Contact the juvenile's parents and arrange for a counseling interview with the juvenile and his or her parents as soon as possible;

(c) Conduct counseling interviews with the juvenile and his or her parents, to the end that resolution of the child/parent conflict is attained and the child is returned home as soon as possible; and

(d) Provide additional crisis counseling as needed, to the end that placement of the child in the crisis residential center will be required for the shortest time possible, but not to exceed seventy-two hours.

(3) A juvenile taking unauthorized leave from this residence may be apprehended and returned to it by law enforcement officers or other persons designated as having this authority as provided in RCW 13.32A.050. If returned to the facility after having taken unauthorized leave for a period of more than twenty-four hours a juvenile may be supervised by such a facility for a period, pursuant to this chapter, which, unless where otherwise provided, may not exceed seventy-two hours on the premises. Costs of housing juveniles admitted to crisis residential centers shall be assumed by the department for a period not to exceed seventy-two hours. [1979 c 155 § 79.]

Appropriation—Effective date—Severability—1979 c 155:
See notes following RCW 13.04.011.

74.13.034 Crisis residential centers—Removal to another center—Placement in secure detention facility—Legislative intent. (1) A child taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032(2) may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center or the nearest regional crisis residential center. Placement in both centers shall not exceed seventy-two hours from the point of intake as provided in RCW 13.32A.130.

(2) A child taken into custody and taken to a crisis residential center established by this chapter may be placed physically by the department or the department's designee and, at departmental expense and approval, in a secure detention facility operated by the county in which the center is located for a maximum of twenty-four hours, including Saturdays, Sundays, and holidays, if the person in charge of the crisis residential center finds that the child is severely, emotionally, or behaviorally disturbed to the point that the child is suicidal, seriously assaultive, or seriously destructive towards others and the center is unable to provide appropriate supervision and structure. Any child who takes unauthorized

leave from the center, if the person in charge of the center cannot provide supervision and structure adequate to ensure that the child will not again take unauthorized leave, may be taken to a secure detention facility subject to the provisions of this section: *Provided*, That juveniles placed in such a facility pursuant to this section may not, to the extent possible, come in contact with alleged or convicted juvenile or adult offenders.

(3) Any child placed in secure detention pursuant to this section shall, during the period of confinement, be provided with appropriate treatment by the department or the department's designee, which shall include the services defined in RCW 74.13.033(2). If the child placed in secure detention is not returned home or if an alternative living arrangement agreeable to the parent and the child is not made within twenty-four hours after the child's admission, the child shall be taken at the department's expense to a crisis residential center. Placement in the crisis residential center or centers plus placement in juvenile detention shall not exceed seventy-two hours from the point of intake as provided in RCW 13.32A.130.

(4) Juvenile detention facilities used pursuant to this section shall first be certified by the department to ensure that juveniles placed in the facility pursuant to this section are provided with living conditions suitable to the well-being of the child. Where space is available, juvenile courts, when certified by the department to do so, shall provide secure placement for juveniles pursuant to this section, at department expense.

(5) It is the intent of the legislature that by December 1, 1980, crisis residential centers, supplemented by community mental health programs and mental health professionals, will be able to respond appropriately to children admitted to centers under this chapter and will be able to respond to the needs of such children with appropriate treatment, supervision, and structure. [1979 1st ex.s. c 165 § 21; 1979 c 155 § 80.]

Severability—1979 1st ex.s. c 165: See RCW 26.32.911.

Application—1979 1st ex.s. c 165: See RCW 26.32.915.

Appropriation—Effective date—Severability—1979 c 155:
See notes following RCW 13.04.011.

74.13.035 Crisis residential centers—Annual records, contents—Multiple licensing. Crisis residential centers shall compile yearly records which shall be transmitted to the department and which shall contain information regarding population profiles of the children admitted to the centers during each past calendar year. Such information shall include but shall not be limited to the following:

(1) The number, age, and sex of children admitted to custody;

(2) Who brought the children to the center;

(3) Services provided to children admitted to the center;

(4) The circumstances which necessitated the children being brought to the center;

(5) The ultimate disposition of cases;

(6) The number of children admitted to custody who ran away from the center and their ultimate disposition, if any;

(7) Length of stay.

The department may require the provision of additional information and may require each center to provide all such necessary information in a uniform manner.

A center may, in addition to being licensed as such, also be licensed as a family foster home or group care facility and may house on the premises juveniles assigned for foster or group care. [1979 c 155 § 81.]

Appropriation—Effective date—Severability—1979 c 155:
See notes following RCW 13.04.011.

74.13.036 Departmental duties relative to 1979 act—Reports to governor and legislature. The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that *chapter 155, Laws of 1979 is implemented in a uniform manner throughout the state. The department shall make periodic reports to the governor and to the legislature regarding implementation of the chapters cited in this section and shall report any violations and misunderstandings regarding the implementation thereof. Where appropriate, the department shall request opinions from the attorney general regarding correct construction of these laws. [1979 c 155 § 82.]

***Reviser's note:** Disposition of sections in chapter 155, Laws of 1979, see notes following RCW 13.04.011.

Appropriation—Effective date—Severability—1979 c 155:
See notes following RCW 13.04.011.

74.13.040 Rules and regulations for coordination of services. See RCW 74.12.280.

74.13.050 Day care—Rules and regulations governing the provision of day care as a part of child welfare services. See RCW 74.12.340.

74.13.060 Secretary as custodian of funds of person placed with department—Authority—Limitations—Termination. The secretary or his designees or delegates shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:

(1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.

(2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person

during the period for which the benefits, payments, funds or accruals were paid.

(3) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him on an individual basis. Whenever, the funds belonging to any one person exceed the sum of five hundred dollars, the secretary may deposit said funds in a savings and loan association account on behalf of that particular person.

(4) When the conditions of placement no longer exist and public assistance is no longer being provided for such person, upon a showing of legal competency and proper authority, the secretary shall deliver to such person, or the parent, person, or agency legally responsible for such person, all funds belonging to the person remaining in his possession as custodian, together with a full and final accounting of all receipts and expenditures made therefrom.

(5) The appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to such guardian any funds of such person remaining in the secretary's possession together with full and final accounting of all receipts and expenditures made therefrom. [1971 ex.s. c 169 § 7.]

74.13.070 Moneys in possession of secretary not subject to certain proceedings. None of the moneys or other funds which come into the possession of the secretary under *this 1971 amendatory act shall be subject to execution, levy, attachment, garnishment or other legal process or other operation of any bankruptcy or insolvency law. [1971 ex.s. c 169 § 8.]

***Reviser's note:** *this 1971 amendatory act* consists of RCW 74.08.025, 74.08.030, 74.08.050, 74.09.510, 74.10.020, 74.12.030, 74.13.060, 74.13.070, 74.16.030, 74.36.110, 74.36.120 and 74.36.130.

ADOPTION SUPPORT DEMONSTRATION ACT OF 1971

74.13.100 State policy enunciated. It is the policy of this state to enable the secretary to charge fees for certain services to adoptive parents who are able to pay for such services.

It is, however, also the policy of this state that the secretary of the department of social and health services shall be liberal in waiving, reducing, or deferring payment of any such fee to the end that adoptions shall be encouraged in cases where prospective adoptive parents lack means.

It is the policy of this state to encourage, within the limits of available funds, the adoption of certain hard to place children in order to make it possible for children living in, or likely to be placed in, foster homes or institutions to benefit from the stability and security of permanent homes in which such children can receive continuous parental care, guidance, protection, and love and to reduce the number of such children who must be

placed or remain in foster homes or institutions until they become adults.

It is also the policy of this state to try, by means of the program of adoption support authorized in RCW 26.32.115 and 74.13.100 through 74.13.145, to reduce the total cost to the state of foster home and institutional care. [1971 ex.s. c 63 § 1.]

74.13.103 Prospective adoptive parent's fee for cost of adoption services. When a child proposed for adoption is placed with a prospective adoptive parent the department may charge such parent a fee in payment or part payment of such adoptive parent's part of the cost of the adoption services rendered and to be rendered by the department.

In charging such fees the department shall treat a husband and wife as a single prospective adoptive parent.

Each such fee shall be fixed according to a sliding scale based on the ability to pay of the prospective adoptive parent or parents.

Such fee scale shall be annually fixed by the secretary after considering the recommendations of the committee designated by the secretary to advise him on child welfare and pursuant to the regulations to be issued by the secretary in accordance with the provisions of Title 34 RCW.

The secretary may waive, defer, or provide for payment in installments without interest of, any such fee whenever in his judgment payment or immediate payment would cause economic hardship to such adoptive parent or parents.

Nothing in this section shall require the payment of a fee to the state of Washington in a case in which an adoption results from independent placement or placement by a licensed child-placing agency. [1971 ex.s. c 63 § 2.]

74.13.106 Disposition of Fees—Use—Federal funds—Gifts and grants. All fees paid for adoption services pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 shall be credited to the general fund. Expenses incurred in connection with supporting the adoption of hard to place children shall be paid by warrants drawn against such appropriations as may be available. The secretary may for such purposes, contract with any public agency or licensed child placing agency and/or adoptive parent and is authorized to accept funds from other sources including federal, private, and other public funding sources to carry out such purposes.

The secretary shall actively seek, where consistent with the policies and programs of the department, and shall make maximum use of, such federal funds as are or may be made available to the department for the purpose of supporting the adoption of hard to place children. The secretary may, if permitted by federal law, deposit federal funds for adoption support, aid to adoptions, or subsidized adoption in the general fund and may use such funds, subject to such limitations as may be imposed by federal or state law, to carry out the program of adoption support authorized by RCW 26.32.115 and 74.13.100 through 74.13.145.

[1979 1st ex.s. c 67 § 7; 1975 c 53 § 1; 1973 c 61 § 1; 1971 ex.s. c 63 § 3.]

Severability—1979 1st ex.s. c 67: See note following RCW 19.28.330.

74.13.109 Rules and regulations—Agreements for disbursements from appropriations available from the general fund, criteria. The secretary shall issue rules and regulations to assist in the administration of the program of adoption support authorized by RCW 26.32.115 and 74.13.100 through 74.13.145.

Disbursements from the appropriations available from the general fund shall be made pursuant to such rules and regulations and pursuant to agreements conforming thereto to be made by the secretary with parents for the purpose of supporting the adoption of children in, or likely to be placed in, foster homes or child caring institutions who are found by the secretary to be difficult to place in adoption because of physical or other reasons; including, but not limited to, physical or mental handicap, emotional disturbance, ethnic background, language, race, color, age, or sibling grouping.

Such agreements shall meet the following criteria:

(1) The child whose adoption is to be supported pursuant to such agreement shall be or have been a child hard to place in adoption.

(2) Such agreement must relate to a child who was or is residing in a foster home or child-caring institution or a child who, in the judgment of the secretary, is both eligible for, and likely to be placed in, either a foster home or a child-caring institution.

(3) Such agreement shall provide that adoption support shall not continue beyond the time that the adopted child reaches twenty-one years of age, becomes emancipated, dies, or otherwise ceases to need support, provided that if the secretary shall find that continuing dependency of such child after such child reaches twenty-one years of age warrants the continuation of support pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 the secretary may do so, subject to all the provisions of RCW 26.32.115 and 74.13.100 through 74.13.145, including annual review of the amount of such support.

(4) Any prospective parent who is to be a party to such agreement shall be a person who, while having the character, judgment, sense of responsibility, and disposition which make him or her suitable as an adoptive parent of such child, lacks the financial means fully to care for such hard to place child. [1979 1st ex.s. c 67 § 8; 1971 ex.s. c 63 § 4.]

Severability—1979 1st ex.s. c 67: See note following RCW 19.28.330.

74.13.112 Factors determining payments or adjustment in standards. The factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 and in adjusting standards hereunder shall include: The size of the family including the adoptive child, the usual living expenses of the family, the special needs of any family member including education needs, the family income, the family resources and plan for savings, the medical and hospitalization

needs of the family, the family's means of purchasing or otherwise receiving such care, and any other expenses likely to be needed by the child to be adopted.

The amounts paid for the support of a child pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 may vary from family to family and from year to year. Due to changes in economic circumstances or the needs of the child such payments may be discontinued and and later resumed.

Payments under RCW 26.32.115 and 74.13.100 through 74.13.145 may be continued by the secretary subject to review as provided for herein, if such parent or parents having such child in their custody establish their residence in another state or a foreign jurisdiction.

In fixing the standards to govern the amount and character of payments to be made for the support of adopted children pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 and before issuing rules and regulations to carry out the provisions of RCW 26.32.115 and 74.13.100 through 74.13.145, the secretary shall consider the comments and recommendations of the committee designated by the secretary to advise him with respect to child welfare. [1971 ex.s. c 63 § 5.]

74.13.115 Both continuing payments and lump sum payments authorized. To carry out the program authorized by RCW 26.32.115 and 74.13.100 through 74.13.145, the secretary may make continuing payments or lump sum payments of adoption support. In lieu of continuing payments, or in addition to them, the secretary may make one or more specific lump sum payments for or on behalf of a hard to place child either to the adoptive parents or directly to other persons to assist in correcting any condition causing such child to be hard to place for adoption.

After determination by the secretary of the amount of a payment or the initial amount of continuing payments, the prospective parent or parents who desire such support shall sign an agreement with the secretary providing for the payment, in the manner and at the time or times prescribed in regulations to be issued by him subject to the provisions of RCW 26.32.115 and 74.13.100 through 74.13.145, of the amount or amounts of support so determined.

Payments shall be subject to review as provided in RCW 26.32.115 and 74.13.100 through 74.13.145. [1971 ex.s. c 63 § 6.]

74.13.118 Review of support payments. At least annually the secretary shall review the need of any adoptive parent or parents receiving continuing support pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145, or the need of any parent who is to receive more than one lump sum payment where such payments are to be spaced more than one year apart. Such review shall be made not later than the anniversary date of the adoption support agreement.

At the time of such annual review and at other times during the year when changed conditions, including variations in medical opinions, prognosis and costs, are deemed by the secretary to warrant such action, appropriate adjustments in payments shall be made based

upon changes in the needs of the child, in the adoptive parents' income, resources, and expenses for the care of such child or other members of the family, including medical and/or hospitalization expense not otherwise covered by or subject to reimbursement from insurance or other sources of financial assistance.

Any parent who is a party to such an agreement may at any time in writing request, for reasons set forth in such request, a review of the amount of any payment or the level of continuing payments. Such review shall be begun not later than thirty days from the receipt of such request. Any adjustment may be made retroactive to the date such request was received by the secretary. If such request is not acted on within thirty days after it has been received by the secretary, such parent may invoke his rights under the hearing provisions set forth in RCW 74.13.127. [1971 ex.s. c 63 § 7.]

74.13.121 Copy of adoptive parent's federal income tax return to be filed—Additional financial information. So long as any adoptive parent is receiving support pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 he shall, not later than two weeks after it is filed with the United States government, file with the secretary a copy of his federal income tax return. Such return and any information thereon shall be marked by the secretary "confidential", shall be used by the secretary solely for the purposes of RCW 26.32.115 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution or agency, public or private, including agencies of the United States government, other than a superior court, judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 is then pending.

In carrying on the review process authorized by RCW 26.32.115 and 74.13.100 through 74.13.145 the secretary may require the adoptive parent or parents to disclose such additional financial information, not privileged, as may enable him to make determinations and adjustments in support to the end that the purposes and policies of this state expressed in RCW 74.13.100 may be carried out, provided that no adoptive parent or parents shall be obliged, by virtue of this section, to sign any agreement or other writing waiving any constitutional right or privilege nor to admit to his or her home any agent, employee, or official of any department of this state, or of the United States government.

Such information shall be marked "confidential" by the secretary, shall be used by him solely for the purposes of RCW 26.32.115 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution, or agency, public or private, including agencies of the United States government other than a superior court judge or commission before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 is then pending. [1971 ex.s. c 63 § 8.]

74.13.124 Agreements as contracts within state and federal Constitutions—State's continuing obligation. An agreement for adoption support made pursuant to

RCW 26.32.115 and 74.13.100 through 74.13.145, although subject to review and adjustment as provided for herein, shall, as to the standard used by the secretary in making such review or reviews and any such adjustment, constitute a contract within the meaning of section 10, Article I of the United States Constitution and section 23, Article I of the state Constitution. For that reason once such an agreement has been made any review of and adjustment under such agreement shall as to the standards used by the secretary, be made only subject to the provisions of RCW 26.32.115 and 74.13.100 through 74.13.145 and such rules and regulations relating thereto as they exist on the date of the initial determination in connection with such agreement or such more generous standard or parts of such standard as may hereafter be provided for by law or regulation. Once made such an agreement shall constitute a solemn undertaking by the state of Washington with such adoptive parent or parents. The termination of the effective period of RCW 26.32.115 and 74.13.100 through 74.13.145 or a decision by the state or federal government to discontinue or reduce general appropriations made available for the purposes to be served by RCW 26.32.115 and 74.13.100 through 74.13.145, shall not affect the state's specific continuing obligations to support such adoptions, subject to such annual review and adjustment for all such agreements as have theretofore been entered into by the state.

The purpose of this section is to assure any such parent that, upon his consenting to assume the burdens of adopting a hard to place child, the state will not in future so act by way of general reduction of appropriations for the program authorized by RCW 26.32.115 and 74.13.100 through 74.13.145 or ratable reductions, to impair the trust and confidence necessarily reposed by such parent in the state as a condition of such parent taking upon himself the obligations of parenthood of a difficult to place child.

Should the secretary and any such adoptive parent differ as to whether any standard or part of a standard adopted by the secretary after the date of an initial agreement, which standard or part is used by the secretary in making any review and adjustment, is more generous than the standard in effect as of the date of the initial determination with respect to such agreement such adoptive parent may invoke his rights, including all rights of appeal under the fair hearing provisions, available to him under RCW 74.13.127. [1971 ex.s. c 63 § 9.]

74.13.127 Voluntary amendments to agreements—
Procedure when adoptive parent dissents—Appeal. Voluntary amendments of any support agreement entered into pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145 may be made at any time. In proposing any such amending action which relates to the amount or level of a payment or payments, the secretary shall, as provided in RCW 74.13.124, use either the standard which existed as of the date of the initial determination with respect to such agreement or any subsequent standard or parts of such standard which both

parties to such agreement agree is more generous than those in effect as of the date of such initial agreement.

The secretary shall seek voluntary amendment of any such agreement before invoking the additional procedures provided for in this section.

Whenever the secretary, having found an adoptive parent declines to agree to a voluntary amendment, wishes to enter an order increasing or decreasing the level of a payment or payments for the support of an adoptive child under RCW 26.32.115 and 74.13.100 through 74.13.145, he shall notify the adoptive parent of the action the secretary proposed to take in writing by certified mail or personal service stating the grounds upon which the secretary proposes such action.

Within thirty days from the receipt of such notice the adoptive parent or parents may serve upon the official of the department sending such notice a written request for hearing. Service of a request for hearing shall be made by certified mail. Upon receiving a request for hearing, such officer shall fix a hearing date, which date shall be not later than thirty-five days from the receipt by him of such request for hearing. The matter shall be heard on such date or on such date to which the matter is continued by agreement of the parties. Such official shall also notify the committee designated by the secretary to advise him on child welfare of the filing of such request not less than twenty-five days before the hearing date. If the adoptive parent agrees, a member of such committee may attend the hearing.

If no request for hearing is made within the time specified, the proposed action shall be taken and the agreement between the adoptive parent and the state shall be deemed amended accordingly.

It shall be the duty of the secretary within thirty days after the date of the hearing to notify the appellant of the decision.

The secretary shall promulgate and publish rules governing the conduct of such hearings, including provision for confidentiality.

In all other respects such proceedings shall be conducted by the department pursuant to RCW 74.08.070 and regulations issued pursuant thereto. The adoptive parent shall have a right of appeal as provided in RCW 74.08.080. If the decision of the secretary or the superior court is made in favor of the appellant, adoption support shall be paid from the effective date of the action or decision appealed from.

Except as otherwise specifically provided for in this section the rules adopted by the secretary and the manner of carrying on the proceedings shall be in accord with the provisions of Title 34 RCW. [1971 ex.s. c 63 § 10.]

74.13.130 Attorney's fee in adoption proceeding. If the secretary determines that a prospective adoptive parent or parents cannot, because of limited financial means, pay the cost or the full cost of an adoption proceeding for the adoption of a hard to place child who would be eligible for support under RCW 26.32.115 and 74.13.100 through 74.13.145, the secretary may authorize the payment from the appropriations available from the general fund of all or part a reasonable attorney's

fee to be determined by the superior court hearing the adoption and court costs. The clerk of the court shall furnish the secretary with a certified copy of the decree of adoption containing the finding as to such attorney's fee.

In evaluating any such prospective parent's ability to pay the secretary may use the same criteria for evaluating ability to pay which are to be used by him in waiving, reducing, or deferring fees pursuant to RCW 74.13.103 plus the burdens likely to be assumed by such parent even after adoption support is provided pursuant to RCW 26.32.115 and 74.13.100 through 74.13.145. [1979 1st ex.s. c 67 § 9; 1971 ex.s. c 63 § 11.]

Severability—1979 1st ex.s. c 67: See note following RCW 19.28.330.

74.13.133 Records—Confidentiality. The secretary shall keep such general records as are needed to evaluate the effectiveness of the program of adoption support authorized by RCW 26.32.115 and 74.13.100 through 74.13.145 in encouraging and effectuating the adoption of hard to place children. In so doing the secretary shall, however, maintain the confidentiality required by law with respect to particular adoptions. [1971 ex.s. c 63 § 13.]

74.13.136 Recommendations for support of the adoption of certain children. Any child-caring agency or person having a child in foster care or institutional care and wishing to recommend to the secretary support of the adoption of such child as provided for in RCW 26.32.115 and 74.13.100 through 74.13.145 may do so, and may include in its or his recommendation advice as to the appropriate level of support and any other information likely to assist the secretary in carrying out the functions vested in the secretary by RCW 26.32.115 and 74.13.100 through 74.13.145. Such agency may, but is not required to, be retained by the secretary to make the required preplacement study of the prospective adoptive parent or parents. [1971 ex.s. c 63 § 14.]

74.13.139 "Secretary" and "department" defined. As used in RCW 26.32.115 and 74.13.100 through 74.13.145 the following definitions shall apply:

(1) "Secretary" means the secretary of the department of social and health services or his designee.

(2) "Department" means the department of social and health services. [1971 ex. s. c 63 § 15.]

74.13.145 Short title—1971 act. RCW 26.32.115 and 74.13.100 through 74.13.145 may be known and cited as the "Adoption Support Demonstration Act of 1971". [1971 ex.s. c 63 § 17.]

74.13.200 Demonstration project for protection, care, and treatment of children who risk abuse or neglect. The department of social and health services shall conduct a two-year demonstration project for the purpose of contracting with an existing day care center to provide for the protection, care, and treatment of children who are at risk of being abused or neglected. The children who shall be served by this project shall range in age from

birth to twenty-four months. The client population served shall not exceed thirty children at any one time. [1979 1st ex.s. c 248 § 1.]

74.13.210 Project day care center—Definition. For the purposes of RCW 74.13.200 through 74.13.230 "day care center" means an agency, other than a residence, which regularly provides care for children for any part of the twenty-four hour day. No day care center shall be located in a private family residence unless that portion of the residence to which the children have access is used exclusively for the children during the hours the center is in operation or is separate from the usual living quarters of the family. [1979 1st ex.s. c 248 § 2.]

74.13.220 Project services. The services provided through this project shall include:

- (1) Transportation to and from the child's home;
- (2) Daily monitoring of the child's physical and emotional condition;
- (3) Developmentally oriented programs designed to meet the unique needs of each child in order to overcome the effects of parental abuse or neglect;
- (4) Family counseling and treatment; and
- (5) Evaluation by the department of social and health services assessing the efficiency and effectiveness of day care centers operated under the project. [1979 1st ex.s. c 248 § 3.]

74.13.230 Project shall utilize community services. The department of social and health services shall utilize existing community services and promote cooperation between the services in implementing the intent of RCW 74.13.200 through 74.13.230. [1979 1st ex.s. c 248 § 4.]

74.13.900 Severability—1965 c 30. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 30 § 6.]

Chapter 74.15

AGENCIES—CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED—CARE, PLACEMENT

Sections	
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74.15.020	Definitions.
74.15.030	Powers and duties of secretary.
74.15.040	Licenses for foster-family homes—Issuance by department.
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- 74.15.130 Licenses—Denial, suspension, revocation—Hearing.
- 74.15.140 Action against licensed or unlicensed agencies authorized.
- 74.15.150 Penalty for operating without license.
- 74.15.160 Continuation of existing licensing rules.
- 74.15.170 Agencies, homes conducted by religious organizations—Application of chapter.
- 74.15.180 Designating home or facility as semi-secure facility.

Adoption: Chapter 26.32 RCW.

Alternative residential placement—Court act upon filing of petition—Child placement: RCW 13.32A.160.

Child abuse: Chapter 26.44 RCW.

Child agencies: Chapter 26.36 RCW.

Immunization program, applicability to day care centers: RCW 28A.31.100–28A.31.122.

Infants: Chapter 26.28 RCW.

Maternity homes: Chapter 18.46 RCW.

Protection of orphan, homeless, or neglected children: Chapter 26.37 RCW.

Uniform Parentage Act: Chapter 26.26 RCW.

74.15.010 Declaration of purpose. The purpose of chapter 74.15 RCW, *RCW 74.32.040 through 74.32.055 and 74.13.031 is:

(1) To safeguard the well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups.

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and developmentally disabled persons. [1977 ex.s. c 80 § 70; 1967 c 172 § 1.]

*Reviser's note: "RCW 74.32.040 through 74.32.055" were repealed by 1971 ex.s. c 189 § 17.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1967 c 172: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 172 § 24.] This applies to RCW 74.13.031 and chapter 74.15 RCW.

74.15.020 Definitions. For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of social and health services;

(2) "Secretary" means the secretary of social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or developmentally disabled persons for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or developmentally disabled persons for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or developmentally disabled persons for services rendered:

(a) "Group-care facility" means an agency which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(e) "Foster-family home" means an agency which regularly provides care during any part of the twenty-four hour day to one or more children, expectant mothers or developmentally disabled persons in the family abode of the person or persons under whose direct care and supervision the child, expectant mother or developmentally disabled person is placed; and

(f) "Crisis residential center" means an agency which is a temporary protective residential facility operated by the department to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036.

"Agency" shall not include the following:

(a) Persons related by blood or marriage to the child, expectant mother or developmentally disabled persons in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, and/or first cousin;

(b) Persons who are legal guardians of the child, expectant mother or developmentally disabled persons;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person does not engage in such activity on a regular basis, or where parents on a mutually cooperative basis exchange care of one another's children, or persons who have the care of an exchange student in their own home;

(d) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(e) Schools, including boarding schools, which are engaged primarily in education, operate on a definite

school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(f) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(j) Facilities approved and certified under RCW 72.33.810;

(k) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund.

(4) "Requirement" means any rule, regulation or standard of care to be maintained by an agency. [1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Appropriation—Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.030 Powers and duties of secretary. The secretary shall have the power and it shall be his duty:

(1) In consultation with the child welfare and day care advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the child welfare and day care advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or developmentally disabled persons;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served.

(3) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(4) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(5) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(6) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with the child welfare and day care advisory committee; and

(7) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons. [1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.040 Licenses for foster-family homes—Issuance by department. Licenses for foster-family homes under the supervision of a licensed agency shall be issued by the department of social and health services upon certification to the department by the licensed agency that such homes meet the requirements for foster homes as adopted pursuant to chapter 74.15 RCW and RCW 74.13.031. [1979 c 141 § 356; 1967 c 172 § 4.]

74.15.050 Fire protection—Powers and duties of state fire marshal. The state fire marshal shall have the power and it shall be his duty:

(1) In consultation with the child welfare and day care advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, except foster-family homes and child-placing agencies, necessary to protect all persons residing therein from fire hazards;

(2) To make or cause to be made such inspections and investigations of agencies, other than foster-family homes or child-placing agencies, as he deems necessary;

(3) To make a periodic review of requirements under RCW 74.15.030(6) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(4) To issue to applicants for licenses hereunder, other than foster-family homes or child-placing agencies, who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department of social and health services before a license shall be issued, except that a provisional license may be issued as provided in RCW 74.15.120. [1979 c 141 § 357; 1967 c 172 § 5.]

74.15.060 Health protection—Powers and duties of secretary of social and health services. The secretary of social and health services shall have the power and it shall be his duty:

In consultation with the child welfare and day care advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to develop minimum requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW, *RCW 74.32.040 through 74.32.055 and 74.13.031, necessary to promote the health of all persons residing therein.

The secretary or the city, county, or district health department designated by him shall have the power and the duty:

(1) To make or cause to be made such inspections and investigations of agencies as may be deemed necessary; and

(2) To issue to applicants for licenses hereunder who comply with the requirements adopted hereunder, a certificate of compliance, a copy of which shall be presented to the department before a license shall be issued, except that a provisional license may be issued as provided in RCW 74.15.120. [1970 ex.s. c 18 § 14; 1967 c 172 § 6.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

Effective date—Severability—1970 ex.s. c 18: See note following RCW 43.20A.010.

74.15.070 Articles of incorporation and amendments—Copies to be furnished to department. A copy of the articles of incorporation of any agency or amendments to the articles of existing corporation agencies shall be sent by the secretary of state to the department of social and health services at the time such articles or amendments are filed. [1979 c 141 § 358; 1967 c 172 § 7.]

74.15.080 Access to agencies, records. All agencies subject to chapter 74.15 RCW and RCW 74.13.031 shall accord the department of social and health services and the state fire marshal, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of chapter 74.15

RCW and RCW 74.13.031 and the requirements adopted thereunder. [1979 c 141 § 359; 1967 c 172 § 8.]

74.15.090 Licenses required. It shall hereafter be unlawful for any agency to receive children, expectant mothers or developmentally disabled persons for supervision or care, or arrange for the placement of such persons, unless such agency is licensed as provided in chapter 74.15 RCW, *RCW 74.32.040 through 74.32.055 and 74.13.031. [1977 ex.s. c 80 § 73; 1967 c 172 § 9.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.100 License application, issuance, duration—Reclassification. Each agency shall make application for a license or renewal of license to the department of social and health services on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Upon receipt of such application, the department shall either grant or deny a license within ninety days. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW and RCW 74.13.031 and the departmental requirements consistent herewith, except that a provisional license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15 RCW and RCW 74.13.031 shall be issued for a period of two years. The licensee, however, shall advise the secretary of any material change in circumstances which might constitute grounds for reclassification of license as to category. [1979 c 141 § 360; 1967 c 172 § 10.]

74.15.110 Renewal of licenses. If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days prior to the expiration date of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department shall act. [1967 c 172 § 11.]

74.15.120 Provisional licenses. The secretary of social and health services may, at his discretion, issue a provisional license to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license, except that a provisional license shall not be granted to any foster-family home. [1979 c 141 § 361; 1967 c 172 § 12.]

74.15.130 Licenses—Denial, suspension, revocation—Hearing. (1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the

requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses;

(2) Whenever the secretary shall have reasonable cause to believe that grounds for denial, suspension or revocation of a license exist or that a licensee has failed to qualify for renewal of a license he shall notify the licensee in writing by certified mail, stating the grounds upon which it is proposed that the license be denied, suspended, revoked or not renewed.

Within thirty days from the receipt of notice of the grounds for denial, suspension, revocation or lack of renewal, the licensee may serve upon the secretary a written request for hearing. Service of a request for hearing shall be made by certified mail. Upon receiving a request for hearing, the secretary shall fix a date upon which the matter may be heard, which date shall be not less than thirty-five days from the receipt of the request for such hearing and he shall also notify the child welfare and day care advisory committee not less than twenty-five days before the hearing date. If no request for hearing is made within the time specified, the license shall be deemed denied, suspended or revoked. It shall be the duty of the secretary within thirty days after the date of the hearing to notify the appellant of his decision. The secretary shall promulgate and publish rules governing the conduct of hearings.

Except as specifically provided above, the rules adopted and the hearings conducted shall be in accordance with Title 34 RCW (Administrative Procedure Act). [1979 c 141 § 362; 1967 c 172 § 13.]

74.15.140 Action against licensed or unlicensed agencies authorized. Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or such other relief as he may deem advisable against any agency subject to licensing under the provisions of chapter 74.15 RCW and RCW 74.13.031 or against any such agency not having a license as heretofore provided in chapter 74.15 RCW and RCW 74.13.031. [1979 c 141 § 363; 1967 c 172 § 14.]

74.15.150 Penalty for operating without license. Any agency operating without a license shall be guilty of a misdemeanor. This section shall not be enforceable against an agency until sixty days after the effective date of new rules, applicable to such agency, have been adopted under chapter 74.15 RCW, *RCW 74.32.040 through 74.32.055 and 74.13.031. [1967 c 172 § 15.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

74.15.160 Continuation of existing licensing rules. Existing rules for licensing adopted pursuant to chapter 74.14 RCW, sections 74.14.010 through 74.14.150, chapter 26, Laws of 1959, shall remain in force and effect until new rules are adopted under chapter 74.15

RCW, *RCW 74.32.040 through 74.32.055 and 74.13.031, but not thereafter. [1967 c 172 § 16.]

*Reviser's note: "RCW 74.32.040 through 74.32.055", see note following RCW 74.15.010.

74.15.170 Agencies, homes conducted by religious organizations—Application of chapter. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents of any agency, children's institution, child placing agency, maternity home, day or hourly nursery, foster home or other related institution conducted for or by members of a recognized religious sect, denomination or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such a home or institution. [1967 c 172 § 21.]

74.15.180 Designating home or facility as semi-secure facility. The department, pursuant to rules, may enable any licensed foster family home or group care facility to be designated as a semi-secure facility, as defined by RCW 13.32A.030. [1979 c 155 § 84.]

Appropriation—Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Chapter 74.16

AID TO BLIND PERSONS—WASHINGTON STATE COMMISSION FOR THE BLIND

Sections	
74.16.030	Eligibility.
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74.16.540	Expiration of commission.

Reviser's note—Sunset Act application: The Washington state commission for the blind is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.225. RCW 74.16.030 through 74.16.540, and 74.17.010 through 74.17.040 are scheduled for future repeal under RCW 43.131.226.

Blind made products—Services: Chapter 19.06 RCW.

Funds for assistance to blind students in institutions of higher learning: RCW 28B.10.215.

State schools for blind and deaf: Chapter 72.40 RCW.

74.16.030 Eligibility. In addition to meeting the eligibility requirements of RCW 74.08.025, an applicant for aid to the blind assistance must be an applicant:

(1) Who has no vision or whose vision, with correcting glasses, is so defective as to prevent the performance of ordinary activities for which eyesight is essential; and

(2) Who is not publicly soliciting alms in any part of this state. The term "publicly soliciting" means the wearing, carrying, or exhibiting of signs denoting blindness and the carrying of receptacles for the reception of alms, or the doing of the same by proxy, or by begging: *Provided*, That no person otherwise eligible shall be deemed ineligible who has been a patient in a public hospital for a period of less than thirty days; or is employed in a shop maintained for the blind which does not furnish board or room; or attends a college or university in the state; or who pays the assistance money received to a private institution or home for his care.

(3) Who is a resident of the state of Washington. [1971 ex.s. c 169 § 9; 1967 c 78 § 1; 1965 c 128 § 1; 1959 c 26 § 74.16.030. Prior: 1953 c 174 § 21; 1941 c 170 § 1; 1937 c 132 § 8; 1935 c 106 § 2; 1933 c 102 § 3; 1921 c 72 § 3; Rem. Supp. 1941 § 10007-6.]

Sunset Act application: See note following chapter digest.

74.16.040 Examination of applicant's eyes. Examination of the applicant's eyes by an ophthalmologist or physician skilled in diseases of the eye or by a licensed optometrist shall be provided without charge to the applicant for aid to the blind assistance. [1959 c 26 § 74.16.040. Prior: 1953 c 174 § 22; 1951 1st ex.s. c 5 § 1; 1941 c 170 § 2; 1937 c 132 § 9; Rem. Supp. 1941 § 10007-7.]

Sunset Act application: See note following chapter digest.

Welfare agencies may not discriminate between licensed ocular practitioners: RCW 18.53.160.

74.16.170 Prevention of blindness. In cooperation with the department of social and health services, there shall be established and maintained such service as is needed looking toward the prevention of blindness, the purpose of which shall be to determine the causes of blindness, and to inaugurate and cooperate in any preventive measures for the state of Washington as may appear practicable. Whenever a blind or partially blind person can be benefited by medical or surgical treatment for which he is unable to pay, arrangement shall be made for an examination, with the consent of the individual, and for the necessary treatment by an ophthalmologist or physician skilled in the diseases of the eye. [1977 ex.s. c 40 § 16; 1959 c 26 § 74.16.170. Prior: 1937 c 132 § 3; RRS § 10007-1.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.181 Vocational training—Self-support, self-care—Program of services authorized. The commission may maintain or cause to be maintained a program of services to assist visually handicapped persons to overcome vocational handicaps and to obtain the maximum degree of self-support and self-care. Services provided for under this section may be furnished to clients from other agencies of this or other states for a fee which shall not be less than the actual costs of such services. Under such program the commission may:

(1) Furnish diagnostic evaluation to determine the nature and scope of services to be provided.

(2) Provide physical restoration to eliminate or minimize the effects of the handicap.

(3) Provide for special education and/or training in the professions, business or trades under a vocational rehabilitation plan, and if the same cannot be obtained within the state, provisions shall be made for such purposes outside of the state. Living maintenance during the period of such education and/or training within or without the state may be furnished.

(4) Establish, construct, and/or maintain one or more rehabilitation centers, training centers and/or workshops to teach visually handicapped persons to prepare for and maintain trades or occupations when such training is feasible and will contribute to the efficiency and/or support of such visually handicapped persons, to provide employment for them and to devise means for the sale and distribution of their products.

(5) Provide teacher-counselor services and teaching of subjects which will assist visually handicapped persons in the ease and enjoyment of daily living.

(6) Place visually handicapped persons in jobs and/or business enterprises in accordance with the abilities and interests of the applicant therefor.

(7) Teach visually handicapped persons trades or occupations which may be followed in their homes and to assist them in whatever manner may seem advisable in disposing of the products of their home industries.

(8) Aid individual visually handicapped persons or groups of visually handicapped persons to engage in gainful occupations by furnishing materials, equipment, goods or services to them, by providing such financial assistance as may be necessary to encourage and equip them to reach an objective established with them by the agency. [1977 ex.s. c 40 § 17; 1967 c 59 § 1.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

Vocational rehabilitation and services for handicapped persons: Chapter 28A.10 RCW.

74.16.183 Vocational training—Eligibility for commission services. An applicant for services from the commission must be an applicant:

Who has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential or who has an eye condition of a progressive nature which may lead to blindness. [1977 ex.s. c 40 § 18; 1967 c 59 § 2.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.190 Home industries revolving fund. The commission may create an operating fund of fifteen thousand dollars from any money appropriated for the blind to be used to create a home industries revolving fund for the purpose of advancing the cost of production and wages for the blind engaged in industry under the supervision of the commission and to promote the sale of articles produced by such industry. All moneys received from the sale of articles produced in industries of the blind under the supervision of the commission shall be deposited in the home industries revolving fund. [1977 ex.s. c 40 § 19; 1959 c 26 § 74.16.190. Prior: 1953 c 174 § 46; 1939 c 75 § 1; 1937 c 132 § 5; RRS § 10007-2a.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.300 Services provided to help attain self-care. The commission is authorized to provide social and related services as are reasonably necessary to the end that applicants for or recipients of aid to the blind assistance are helped to attain self-care. [1977 ex.s. c 40 § 20; 1959 c 26 § 74.16.300. Prior: 1957 c 63 § 9.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.400 Commission for the blind—Legislative declaration. The purpose of RCW 74.16.400 through 74.16.530 is to promote the economic and social welfare of blind persons in the state of Washington, to relieve blind or visually handicapped persons from the distress of poverty through their complete integration into society on the basis of equality, and to encourage and assist blind or visually handicapped persons in their efforts to become economically and socially independent so as to render themselves more self-supporting. [1977 ex.s. c 40 § 1.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 40: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 40 § 25.] This applies to RCW 74.16.400 through 74.16.540 and to the 1977 amendments to RCW 43.20A.300, 74.16.170, 74.16.181, 74.16.183, 74.16.190, 74.16.300, 74.17.010, 74.17.020, and 74.17.040.

74.16.410 Commission for the blind created—Membership—Terms—Vacancies—Chairperson—Per diem and expenses. (1) There is hereby created the Washington state commission for the blind. As used in this chapter, unless the context otherwise requires, "commission" means the Washington state commission for the blind. The commission shall consist of five members of whom at least three shall be blind as defined in RCW 74.16.030(1) as now existing or hereafter amended. Commission members shall be residents of the state of Washington, and no member shall be an employee of the commission.

(2) The governor shall, with the advice and consent of the senate, appoint members of the commission for terms of three years, except that the initial appointment shall be as follows: (a) Two members for terms of three years; (b) two members for terms of two years; and (c) one member for a term of one year. All vacancies in the

membership of the commission shall only be filled for the remainder of the unexpired term.

(3) Commission members shall elect one of their members as chairperson of the commission for a term of one year or until a successor has been elected. The commission chairperson shall preside over meetings to be held at least once every quarter on such date and at such place as may be set by the commission. In addition, a majority of the commission may require such special meetings as may be necessary.

(4) Commission members shall not receive a salary, but shall receive twenty-five dollars for each day or major portion thereof spent in the performance of their official duties, plus reimbursement for travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1977 ex.s. c 40 § 2.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.420 Director and personnel. (1) The commission shall appoint a director whose function shall be to serve as secretary to the commission and director of programs established by the commission. The commission in appointing such director shall give preference to qualified blind persons and/or persons experienced in working with various programs for the blind. The director of the commission shall be executive head and appointing authority for all activities undertaken in the name of the commission.

(2) The director may appoint such officers as deemed necessary, none of whom shall be members of the commission. Moreover, the director and deputy director, together with their confidential secretaries and any assistant directors shall be exempt from the civil service laws of this state. The director's salary and the salaries of the officers designated in this subsection shall be fixed by the governor, pursuant to the provisions of RCW 43.03.040 in the same manner as salaries are fixed for persons appointed by the governor. [1977 ex.s. c 40 § 3.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.440 Commission—Powers and duties. The commission, through the director, shall serve as the sole agency of the state for contracting for and disbursement of all federal and state funds appropriated for any and all programs and services established by and within the jurisdiction of this chapter or chapter 74.17 RCW. The director, in the name of the commission, shall make such reports and render such accounting as may be required including a biennial report to the governor and the legislature, which report shall include a summary of all rules and regulations adopted pursuant to this chapter. [1977 ex.s. c 40 § 5.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.450 Commission—Plans, rules, and regulations—Federal funds. The commission, through the director, shall serve as the sole agency of the state in

preparing, adopting, and certifying state plans, rules, and regulations for services for the blind and visually handicapped, as set forth in this chapter and in seeking federal funds for same. [1977 ex.s. c 40 § 6.]

Sunset Act application: See note following chapter digest.
Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.460 Commission—Responsibility for negotiations with federal government. The commission shall be responsible for all negotiations with the federal government regarding the Randolph Sheppard Act (P.L. 93-516, 88 Stat. 1622 Title 2). [1977 ex.s. c 40 § 7.]

Sunset Act application: See note following chapter digest.
Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.470 Gifts and contributions—Receipt and expenditure. The director, in the name of the commission, may accept contributions or gifts in cash or otherwise from persons, associations, or corporations. Contributions and gifts shall be disbursed, under RCW 74.16.440, in the same manner as moneys appropriated for implementing the purposes of this chapter. However, the donor of such gifts may stipulate the manner in which such gifts shall be expended. [1977 ex.s. c 40 § 8.]

Sunset Act application: See note following chapter digest.
Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.480 Paramount construction. To effectively carry out the intent and purposes of RCW 74.16.400 through 74.16.530 any conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, shall be resolved in favor of RCW 74.16.400 through 74.16.530. [1977 ex.s. c 40 § 9.]

Sunset Act application: See note following chapter digest.
Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.490 Employment of educational consultants—Director's liaison duties. (1) The commission may employ qualified educational consultants to assist public or private school teachers responsible for teaching visually handicapped students. Educational consultants shall assist public and private school teachers by providing methods and materials for teaching visually handicapped students. The superintendent of public instruction shall inform the commission of all schools having visually handicapped students enrolled therein.

(2) The director shall be the liaison between the commission, the state school for the blind, the superintendent of public instruction, and the department of social and health services and shall coordinate all programs affecting blind students. [1977 ex.s. c 40 § 10.]

Sunset Act application: See note following chapter digest.
Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.500 Collective bargaining—Not affected by chapter. Nothing in this chapter shall be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining contract or agreement until such contract or agreement has expired

or until the state personnel board, as provided by law, modifies the bargaining unit. [1977 ex.s. c 40 § 11.]

Sunset Act application: See note following chapter digest.
Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.510 Eye examinations may be required—Costs. (1) An applicant for services to the blind may be required to submit to an eye examination. Such examination shall be performed by an ophthalmologist or physician skilled in diseases of the eye or by a licensed optometrist and may be provided without charge to the applicant for services to the blind. Unless other funds are available, all examinations shall be paid for by the commission.

(2) The commission may contract with the department of social and health services to provide eye examinations for applicants for aid to the blind. The cost of such examinations will be paid for by the department of social and health services. [1977 ex.s. c 40 § 12.]

Sunset Act application: See note following chapter digest.
Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.520 Administrative review. (1) Every person aggrieved by a decision or action or inaction of the commission shall be granted, upon request, an administrative review of such decision or action or inaction. A hearing shall be held and a decision rendered by the commission or its designee within fifteen days of receipt of a request for administrative review. All hearings held pursuant to this section shall be conducted in the county in which the applicant resides, and a transcript of the testimony shall be made and included in the record, the cost of which shall be borne by the commission.

(2) A copy of this transcript shall be made available to the aggrieved party or his attorney of record upon written request.

(3) Unless this chapter specifically provides otherwise, the administrative procedure act, chapter 34.04 RCW, shall whenever applicable herein govern the rights, remedies, and procedures with respect to the administration of this chapter. [1977 ex.s. c 40 § 13.]

Sunset Act application: See note following chapter digest.
Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.530 Judicial review. (1) A person aggrieved by the decision rendered in a hearing held pursuant to RCW 74.16.520, shall have the right to petition the superior court for judicial review pursuant to chapter 34.04 RCW.

(2) An aggrieved party may secure review of any final judgment under this chapter by appeal to the supreme court or the court of appeals.

(3) The appellant under this section, shall not be required to post bond or to pay any filing fees with respect to such appeal. In addition, an appellant receiving a favorable decision upon appeal under this section, shall be entitled to reasonable attorney's fees and costs. [1977 ex.s. c 40 § 14.]

Sunset Act application: See note following chapter digest.
Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.16.540 Expiration of commission. The Washington state commission for the blind and its operations shall expire automatically on June 30, 1983, unless such expiration date be removed or extended by subsequent action of the legislature. [1977 ex.s. c 40 § 24.]

Sunset Act application: See note following chapter digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

Chapter 74.17

BLIND PERSONS—VENDING FACILITIES IN PUBLIC BUILDINGS

Sections

74.17.010	Definitions.
74.17.020	Priority to blind persons.
74.17.030	Business enterprises revolving fund.
74.17.040	Rules and regulations—Existing facilities.

74.17.010 Definitions. The terms defined in this section shall have the indicated meanings when used in this chapter.

(1) "Commission" means the Washington state commission for the blind.

(2) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select.

(3) "Licensee" means a blind person licensed by the state of Washington pursuant to federal law, 49 Stat. 1559, as amended, 20 U.S.C. sec. 107, this chapter, and the rules and regulations issued hereunder.

(4) "Public building" means any building owned by the state of Washington or any political subdivision thereof and any space leased by the state of Washington or any political subdivision thereof in any privately owned building and designated by the commission as being appropriate for inclusion in the business enterprises program: *Provided, however,* That any vending facility or vending machine under the jurisdiction and control of another established state or local board or authority responsible for its maintenance and operation shall not be designated without the consent and approval of such state or local board or authority.

(5) "Vending facility" means any vending stand, facility, cafeteria, or snack bar at which food, tobacco, or sundries are offered for sale.

(6) "Vending machine" means any coin operated machine offering food, tobacco, or sundries for sale.

(7) "Business enterprises program" is that program operated by the commission pursuant to applicable federal law and this chapter in support of blind persons operating vending businesses in public buildings. [1977 ex.s. c 40 § 21; 1975 1st ex.s. c 251 § 1.]

Sunset Act application: See note following chapter 74.16 RCW digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.17.020 Priority to blind persons. (1) The commission is authorized to license blind persons for the operation of vending facilities and machines on federal property and in public buildings.

(2) The state, political subdivisions thereof, and agencies of the state or political subdivisions thereof shall give priority to licensees in the operation of vending facilities and machines in a public building. [1977 ex.s. c 40 § 22; 1975 1st ex.s. c 251 § 2.]

Sunset Act application: See note following chapter 74.16 RCW digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

74.17.030 Business enterprises revolving fund. (1) There is established in the general fund an account known as "the business enterprises revolving fund".

(2) The net proceeds from any vending machine operation in a public building, other than such an operation managed by a licensee, shall be made payable to the business enterprises revolving fund. "Net proceeds", for purposes of this section, shall mean the gross amount received less the costs of the operation, including a fair minimum return to the operator, which return shall not exceed a reasonable amount to be determined by the department.

(3) All moneys in the business enterprises revolving fund shall be expended only for equipment, services, and payment to licensees in the business enterprises programs. [1975 1st ex.s. c 251 § 3.]

Sunset Act application: See note following chapter 74.16 RCW digest.

74.17.040 Rules and regulations—Existing facilities. (1) The commission shall promulgate rules necessary to implement this chapter.

(2) This chapter and rules promulgated thereunder shall not apply to any franchise, concession, or contract governing operation of a vending facility in a public building if such franchise, concession, or contract was in existence immediately prior to September 8, 1975. [1977 ex.s. c 40 § 23; 1975 1st ex.s. c 251 § 4.]

Sunset Act application: See note following chapter 74.16 RCW digest.

Severability—1977 ex.s. c 40: See note following RCW 74.16.400.

Chapter 74.20

SUPPORT OF DEPENDENT CHILDREN

Sections

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- 74.20.350 Costs and attorneys' fees.

Aid to dependent children: Chapter 74.12 RCW.

74.20.010 Purpose—Legislative intent—Chapter to be liberally construed. It is the responsibility of the state of Washington through the state department of social and health services to conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or completely meet the financial needs of the children of this state. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

The purpose of this chapter is to provide the state of Washington, through the department of social and health services, a more effective and efficient way to effect the support of dependent children by the person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those persons primarily responsible are avoiding their obligations. It is the intention of the legislature that the powers delegated to the said department in this chapter be liberally construed to the end that persons legally responsible for the care and support of children within the state be required to assume their legal obligations in order to reduce the financial cost to the state of Washington in providing public assistance funds for the care of children. It is the intention of the legislature that the department provide sufficient staff to carry out the purposes of this chapter, chapter 74.20A RCW, the abandonment and nonsupport statutes, and any applicable federal support enforcement

statute administered by the department. It is also the intent of the legislature that the staff responsible for support enforcement be encouraged to conduct their support enforcement duties with fairness, courtesy, and the highest professional standards. [1979 1st ex.s. c 171 § 24; 1979 c 141 § 364; 1963 c 206 § 1; 1959 c 322 § 2.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20.020 Definitions. For the purposes of this chapter a dependent child shall mean a child who is in financial need as determined by the department pursuant to Title 74 RCW. [1963 c 206 § 2; 1959 c 322 § 3.]

74.20.040 Duty of department to enforce child support—Support enforcement services. Whenever the department of social and health services receives an application for public assistance on behalf of a child and it shall appear to the satisfaction of the department that said child has been abandoned by its parents or that the child and one parent have been abandoned by the other parent or that the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to such child, the department shall take appropriate action under the provisions of this chapter, the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that such parent or other person responsible shall pay for the care, support, or maintenance of said dependent child.

The secretary may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take action as he deems appropriate to establish or enforce support obligations against persons owing a duty to pay support. Action may be taken under the provisions of chapter 74.20 RCW, the abandonment or nonsupport statutes, or other appropriate statutes of this state, including but not limited to remedies established in chapter 74.20A RCW, to establish and enforce said support obligations. The secretary may establish by regulation, such reasonable standards as he deems necessary to limit applications for support enforcement services. Said standards shall take into account the income, property, or other resources already available to support said person for whom a support obligation exists.

The secretary may charge a fee to compensate the department for services rendered in establishment of or enforcement of support obligations. This fee shall be agreed on in writing with the custodian or guardian of the person for whom a support obligation is owed, or that person if no custodian or guardian exists and shall be limited to not more than ten percent of any support money collected as a result of action taken by the secretary. The secretary shall by regulation establish reasonable fees for support enforcement services and said schedule of fees shall be made available to all applicants for support enforcement services. The secretary may, on showing of necessity, waive or defer any such fee. [1973 1st ex.s. c 183 § 1; 1971 ex.s. c 213 § 1; 1963 c 206 § 3; 1959 c 322 § 5.]

74.20.060 Cooperation by person having custody of child—Penalty. Any person having the care, custody or control of any dependent child or children who shall fail or refuse to cooperate with the department of social and health services, any prosecuting attorney or the attorney general in the course of administration of provisions of this chapter shall be guilty of a misdemeanor. [1979 c 141 § 365; 1959 c 322 § 7.]

74.20.101 Payment of support moneys to support enforcement and collections unit—Notice—Effects of noncompliance. Whenever, as a result of any action, support money is paid by the person or persons responsible for support, such payment shall be paid through the support enforcement and collections unit of the state department of social and health services upon written notice by the department to the responsible person or to the clerk of the court, if appropriate, that the children for whom a support obligation exists are receiving public assistance or that the support debt has been assigned to the department.

After service on a responsible parent of a notice under this section or RCW 74.20A.040 or 74.20A.055, payment of moneys or in-kind providings for the support of the responsible parent's children which are not paid to the department shall not be credited against or set-off against any obligation to provide support which has been assigned to the department, whether the obligation has been determined by court order, or pursuant to RCW 74.20A.055, or is unliquidated. [1979 1st ex.s. c 171 § 13; 1973 1st ex.s. c 183 § 2; 1969 ex.s. c 173 § 16.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20.160 Department may disclose information to internal revenue department. Notwithstanding the provisions of RCW 74.04.060, upon approval of the department of health, education and welfare of the federal government, the department of social and health services may disclose to and keep the internal revenue department of the treasury of the United States advised of the names of all persons who are under legal obligation to support any dependent child or children and who are not doing so, to the end that the internal revenue department may have available to it the names of such persons for review in connection with income tax returns and claims of dependencies made by persons filing income tax returns. [1979 c 141 § 366; 1963 c 206 § 5; 1959 c 322 § 17.]

74.20.210 Attorney general may act under Uniform Reciprocal Enforcement of Support Act pursuant to agreement with prosecuting attorney. The prosecuting attorney of any county except class AA counties may enter into an agreement with the attorney general whereby the duty to initiate petitions for support authorized under the provisions of chapter 26.21 RCW as it is now or hereafter amended (Uniform Reciprocal Enforcement of Support Act) in cases where the petitioner has applied for or is receiving public assistance on behalf of a dependent child or children shall become the duty of

the attorney general. Any such agreement may also provide that the attorney general has the duty to represent the petitioner in intercounty proceedings within the state initiated by the attorney general which involve a petition received from another county. Upon the execution of such agreement, the attorney general shall be empowered to exercise any and all powers of the prosecuting attorney in connection with said petitions. [1969 ex.s. c 173 § 14; 1963 c 206 § 6.]

74.20.220 Powers of department through the attorney general. In order to carry out its responsibilities imposed under this chapter, the state department of social and health services, through the attorney general, is hereby authorized to:

(1) Represent a dependent child or dependent children on whose behalf public assistance is being provided in obtaining any support order necessary to provide for his or their needs or to enforce any such order previously entered.

(2) Appear as a friend of the court in divorce and separate maintenance suits, or proceedings supplemental thereto, when either or both of the parties thereto are receiving public assistance, for the purpose of advising the court as to the financial interest of the state of Washington therein.

(3) Appear on behalf of the custodial parent of a dependent child or children on whose behalf public assistance is being provided, when so requested by such parent, for the purpose of assisting such parent in securing a modification of a divorce or separate maintenance decree wherein no support, or inadequate support, was given for such child or children: *Provided*, That the attorney general shall be authorized to so appear only where it appears to the satisfaction of the court that the parent is without funds to employ private counsel. If the parent does not request such assistance, or refuses it when offered, the attorney general may nevertheless appear as a friend of the court at any supplemental proceeding, and may advise the court of such facts as will show the financial interest of the state of Washington therein; but the attorney general shall not otherwise participate in the proceeding.

(4) If public assistance has been applied for or granted on behalf of a child of parents who are divorced or legally separated, the attorney general may apply to the superior court in such action for an order directing either parent or both to show cause:

(a) Why an order of support for the child should not be entered, or

(b) Why the amount of support previously ordered should not be increased, or

(c) Why the parent should not be held in contempt for his failure to comply with any order of support previously entered.

(5) Initiate any civil proceedings deemed necessary by the department to secure reimbursement from the parent or parents of minor dependent children for all moneys expended by the state in providing assistance or services to said children. [1979 c 141 § 367; 1973 1st ex.s. c 154 § 112; 1969 ex.s. c 173 § 15; 1963 c 206 § 7.]

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

74.20.230 Petition for support order by married parent with minor or legally adopted children who are receiving public assistance. Any married parent with minor children, natural or legally adopted children who is receiving public assistance may apply to the superior court of the county in which such parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for such spouse's support and the support of such spouse's minor children by filing in such county a petition setting forth the facts and circumstances upon which such spouse relies for such order. If it appears to the satisfaction of the court that such parent is without funds to employ counsel, the state department of social and health services through the attorney general may file such petition on behalf of such parent. If satisfied that a just cause exists, the court shall direct that a citation issue to the other spouse requiring such spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter. [1973 1st ex.s. c 154 § 113; 1963 c 206 § 8.]

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

74.20.240 Petition for support order by married parent with minor or legally adopted children who are receiving public assistance—Order—Powers of court. (1) After the hearing of the petition for an order of support the court shall make an order granting or denying it and fixing, if allowed, the terms and amount of the support. (2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, to make such decree or orders as are equitable in view of the circumstances of both parties and to punish violations thereof as other contempts are punished. [1963 c 206 § 9.]

74.20.250 Petition for support order by married parent with minor or legally adopted children who are receiving public assistance—Waiver of filing fees. The court may, upon satisfactory showing that the petitioner is without funds to pay the filing fee, order that the petition and other papers be filed without payment of the fee. [1963 c 206 § 10.]

74.20.260 Financial statements by parent whose absence is basis of application for public assistance. Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall be required to complete a statement, under oath, of his current monthly income, his total income over the past twelve months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses and such other information as is pertinent to determining his ability to support

his children. Such statement shall be provided upon demand made by the state department of social and health services or attorney general, and if assistance based upon such application is granted on behalf of such child, additional statements shall be filed annually thereafter with the state department of social and health services until such time as the child is no longer receiving such assistance. Failure to comply with this section shall constitute a misdemeanor. [1979 c 141 § 368; 1963 c 206 § 11.]

74.20.270 Scale of suggested minimum contributions. The state department of social and health services shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this chapter. The scale shall include consideration of gross income, shall authorize an expense deduction for determining net income, shall designate other available resources to be considered, and shall specify the circumstances which should be considered in reducing such contributions on the basis of hardship.

The state department of social and health services shall accept and compile any pertinent and reliable information from any available source in order to establish such minimum scale of suggested contributions, and copies of the scale shall be made available to courts, county offices, prosecuting attorneys and, upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter in any manner and attorneys admitted to practice in the state of Washington.

It is intended that the use of the scale formulated pursuant to this section be optional, and that no county, court, officer or agency be required to use said scale unless they so desire. [1979 c 141 § 369; 1963 c 206 § 12.]

74.20.280 Central unit for information and administration—Cooperation enjoined—Availability of records. The department is authorized and directed to establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents and to assure effective cooperation with law enforcement agencies.

To effectuate the purposes of this section, the secretary may request from state, county and local agencies all information and assistance as authorized by this chapter. All state, county and city agencies, officers and employees shall cooperate in the location of parents who have abandoned or deserted, or are failing to support, children receiving public assistance and shall on request supply the state department of social and health services with all information on hand relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential.

Any records established pursuant to the provisions of this section shall be available only to the attorney general, prosecuting attorneys, and courts having jurisdiction in support and/or abandonment proceedings or

actions, or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules and regulations of the department and by the provisions of the federal social security act. [1979 c 141 § 370; 1963 c 206 § 13.]

74.20.300 Department exempt from fees relating to paternity or support. No filing or recording fees, court fees, or fees for making copies of documents shall be required from the state department of social and health services by any county clerk, county auditor, or other county officer for the filing of any actions or documents necessary to establish paternity or enforce or collect support moneys.

Filing fees shall also not be required of any prosecuting attorney or the attorney general for action to establish paternity or enforce or collect support moneys. [1979 1st ex.s. c 171 § 1; 1973 1st ex.s. c 183 § 3; 1963 c 206 § 15.]

Severability—1979 1st ex.s. c 171: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 1st ex.s. c 171 § 28.]

74.20.310 Guardian not required in actions brought on behalf of state, child, or mother. The provisions of RCW 26.26.090 requiring appointment of a general guardian or guardian ad litem to represent the child in an action brought to determine the parent and child relationship do not apply to actions brought under chapter 26.26 RCW if:

(1) The action is brought by the attorney general on behalf of the department of social and health services, the child, or the natural mother; or

(2) The action is brought by any prosecuting attorney on behalf of the state, the child, or the natural mother when referral has been made to the prosecuting attorney by the department of social and health services requesting such action.

The court, on its own motion or on motion of a party, may appoint a guardian ad litem when necessary. [1979 1st ex.s. c 171 § 15.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20.320 Custodian to remit support moneys when department has support obligation—Noncompliance, effect of, action authorized. Whenever a custodian of children, or other person, receives support moneys paid to them which moneys are paid in whole or in part in satisfaction of a support obligation which has been assigned to the department pursuant to 42 U.S.C. Sec. 602(A)(26)(a) or RCW 74.20.330 or to which the department is owed a debt pursuant to RCW 74.20A.030, the moneys shall be remitted to the department within eight days of receipt by the custodian or other person. If not so remitted the custodian or other person shall be indebted to the department as a support debt in an amount equal to the amount of the support money received and not remitted.

By not paying over the moneys to the department, a custodial parent or other person is deemed, without the

necessity of signing any document, to have made an irrevocable assignment to the department of any support delinquency owed which is not already assigned to the department or to any support delinquency which may accrue in the future in an amount equal to the amount of support money retained. The department may utilize the collection procedures in chapter 74.20A RCW to collect the assigned delinquency to effect recoupment and satisfaction of the debt incurred by reason of the failure of the custodial parent or other person to remit. The department is also authorized to make a set-off to effect satisfaction of the debt by deduction from support moneys in its possession or in the possession of any clerk of the court or other forwarding agent which are paid to the custodial parent or other person for the satisfaction of any support delinquency. Nothing in this section authorizes the department to make set-off as to current support paid during the month for which the payment is due and owing. [1979 1st ex.s. c 171 § 17.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20.330 Payment of public assistance deemed assignment to department of rights to support—Department's options, limitations, duties. (1) Whenever public assistance is paid under this title, each applicant or recipient is deemed to have made assignment to the department of any rights to support from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving public assistance, including any rights which have accrued at the time the assignment is made. Payment of public assistance under this chapter operates as an assignment by operation of law.

(2) The department may, during the four months following the last month in which public assistance was paid, and thereafter if a nonassistance application for support enforcement services has been made under RCW 74.20.040, pay the family, from collections made on the delinquent support assigned, an amount equal to the monthly amount required by either the superior court order for support or the administrative order entered under RCW 74.20A.055. Nothing in this section shall be construed to permit the department to make such payments for months in which no collections have been made on the delinquent support assigned, nor is the department permitted to make payments for the support of one person from collections on the delinquent support assigned by a different person. The department has, upon making any such payment, by operation of law an additional assignment of the unpaid obligation owed for the month in which the payment is made. The department shall take action to collect the unpaid obligation to reimburse itself and/or the federal government for the payment made. [1979 1st ex.s. c 171 § 22.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20.340 Employees' case workload standards—Reports to legislative committees. The department shall

develop workload standards for each employee classification involved in support enforcement activities for each category of support enforcement cases. The department shall submit the workload standards and a preliminary forecast of the level of staffing required to meet the workload standards to the senate ways and means committee and the house of representatives revenue and appropriations committees six months before the regular legislative sessions and whenever this information is requested by the senate ways and means committee and the house of representatives revenue and appropriations committees. [1979 1st ex.s. c 171 § 25.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20.350 Costs and attorneys' fees. In order to facilitate and ensure compliance with Title IV-D of the federal social security act, now existing or hereafter amended, wherein the state is required to undertake to establish paternity of such children as are born out of wedlock, the secretary of social and health services may pay the reasonable and proper fees of attorneys admitted to practice before the courts of this state, who are engaged in private practice for the purpose of maintaining actions under chapter 26.26 RCW on behalf of such children, to the end that parent and child relationships be determined and financial support obligations be established by superior court order. The secretary or the secretary's designee shall make the determination in each case as to which cases shall be referred for representation by such private attorneys. The secretary may advance, pay, or reimburse for payment of, such reasonable costs as may be attendant to an action under chapter 26.26 RCW. The representation by a private attorney shall be only on behalf of the subject child, the custodial natural parent, and the child's personal representative or guardian ad litem, and shall not in any manner be, or be construed to be, in representation of the department of social and health services or the state of Washington, such representation being restricted to that provided pursuant to chapters 43.10 and 36.27 RCW. [1979 1st ex.s. c 171 § 19.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

Chapter 74.20A

**SUPPORT OF DEPENDENT CHILDREN—
ALTERNATIVE METHOD—1971 ACT**

Sections

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74.20A.010 Purpose—Remedies additional. Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations. The state of Washington, therefore, exercising its police and sovereign power, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by additional remedies directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this chapter be construed and administered to

the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs. [1971 ex.s. c 164 § 1.]

74.20A.020 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

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

(2) "Secretary" means the secretary of the department of social and health services, his designee or authorized representative.

(3) "Dependent child" means any person under the age of twenty-one who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(4) "Superior court order" means any judgment or order of the superior court of the state of Washington ordering payment of a set or determinable amount of support moneys, or an order of a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support moneys.

(5) "Responsible parent" means a natural parent, adoptive parent, or stepparent of a dependent child.

(6) "Stepparent" means the present spouse of the person who is either the mother, father, or adoptive parent of a dependent child, and such status shall exist and continue as provided for in RCW 26.16.205 until the relationship is terminated by death or dissolution of marriage.

(7) "Support moneys" means any moneys paid to satisfy a support obligation whether denominated as child support, spouse support, alimony, maintenance, or any other such moneys intended to satisfy an obligation for support of any person or satisfaction in whole or in part of arrears or delinquency on such an obligation. [1979 1st ex.s. c 171 § 3; 1971 ex.s. c 164 § 2.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.030 Department subrogated to rights for support—No collection from parents on public assistance or those with developmentally disabled children. The department shall be subrogated to the right of any dependent child or children or person having the care, custody, and control of said child or children, if public assistance money is paid to or for the benefit of the child, to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement of moneys expended, based on the support obligation of the responsible parent established by a superior court order or RCW 26.16.205.

No collection shall be made from a parent or other person who is the recipient of public assistance moneys while such person or persons are in such status.

No collection action shall be taken against parents of children eligible for admission to, or children who have been released from, a state school for the developmentally disabled as defined by chapter 72.33 RCW. [1979

1st ex.s. c 171 § 4; 1979 c 141 § 371; 1973 1st ex.s. c 183 § 4; 1971 ex.s. c 164 § 3.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.040 Notice of support debt based upon subrogation to or assignment of judgment—Service or mailing—Contents—Action on, when. The secretary may issue a notice of a support debt accrued and/or accruing based upon subrogation to or assignment of the judgment created by a superior court order. Said notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action or be mailed to the debtor at his last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt. Said notice of debt shall include a statement of the support debt accrued and/or accruing, computable on the amount required to be paid under any superior court order to which the department is subrogated or has an assigned interest; a statement that the property of the debtor is subject to collection action; a statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the support debt. Action to collect said subrogated or assigned support debt by lien and foreclosure, or distraint, seizure and sale, or order to withhold and deliver shall be lawful after twenty days from the date of service upon the debtor or twenty days from the receipt or refusal by the debtor of said notice of debt. [1973 1st ex.s. c 183 § 5; 1971 ex.s. c 164 § 4.]

74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions—"Need" defined. (1) The secretary may, in the absence of a superior court order, serve on the responsible parent or parents a notice and finding of financial responsibility requiring a responsible parent or parents to appear and show cause in a hearing held by the department why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future for such period of time as the child or children of said responsible parent or parents are in need. Said hearing shall be held pursuant to RCW 74.20A.055, chapter 34.04 RCW, and the rules and regulations of the department, which shall provide for a fair hearing.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice

is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: *Provided*, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than twenty days from the date of service to request in writing a hearing, which request shall be served upon the department by registered or certified mail or personally. If no such request is made, the notice and finding of responsibility shall become final and the debt created therein shall be subject to collection action as authorized under this chapter. If a timely request is made, the execution of notice and finding of responsibility shall be stayed pending the decision on such hearing. If no timely written request for a hearing has previously been made, the responsible parent may petition the secretary or the secretary's designee at any time for a hearing as provided for in this section upon a showing of good cause for the failure to make a timely request for hearing. The filing of the petition for a hearing after the twenty-day period shall not affect any collection action previously taken under this chapter. The granting of a request for the hearing shall operate as a stay on any future collection action, pending the final decision of the secretary or the secretary's designee on the hearing. Moneys withheld as a result of collection action in effect at the time of the granting of the request for the hearing shall be delivered to the department and shall be held in trust by the department pending the final order of the secretary or during the pendency of any appeal to the courts made under chapter 34.04 RCW. The department may petition the hearing examiner to set temporary current and future support to be paid beginning with the month in which the petition for an untimely hearing is granted. The hearing examiner shall order payment of temporary current and future support if appropriate in an amount determined pursuant to the scale of suggested minimum contributions adopted under RCW 74.20.270. In the event the responsible parent does not make payment of the temporary current and future support as ordered by the hearing examiner, the department may take collection action pursuant to chapter 74.20A RCW during the pendency of the hearing or thereafter to collect any amounts owing under the order. Temporary current and future support paid, or collected, during the pendency of the hearing or appeal shall be disbursed to the custodial parent or as otherwise appropriate when received by the department. If the final decision of the department, or of the courts on appeal, is that the department has collected from the responsible parent other than temporary current or future support, an amount greater than such parent's past support debt, the department shall promptly refund any such excess amount to such parent.

(3) Hearings may be held in the county of residence or other place convenient to the responsible parent. Any such hearing shall be a "contested case" as defined in RCW 34.04.010. The notice and finding of financial responsibility shall set forth the amount the department

has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future for such period of time as the child or children of the responsible parent are in need, all computable on the basis of the need alleged. The notice and finding shall also include a statement of the name of the recipient or custodian and the name of the child or children for whom need is alleged; and/or a statement of the amount of periodic future support payments as to which financial responsibility is alleged.

(4) The notice and finding shall include a statement that the responsible parent may object to all or any part of the notice and finding, and request a hearing to show cause why said responsible parent should not be determined to be liable for any or all of the debt, past and future.

The notice and finding shall include a statement that, if the responsible parent fails in timely fashion to request a hearing, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt shall be subject to collection action; a statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver to satisfy the debt.

(5) If a hearing is requested, it shall be promptly scheduled, in no more than thirty days. The hearing, including a hearing on prospective modification, shall be conducted by a duly qualified hearing examiner appointed for that purpose.

After evidence has been presented at hearings conducted by the hearing examiner, the hearing examiner shall enter an initial decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The hearing examiner shall file the original of the initial decision and order, signed by the hearing examiner, with the secretary or the secretary's designee. Copies of the initial decision and order shall be mailed by the hearing examiner to the department and to the appellant by certified mail to the last known address of each party. Within thirty days of filing, either the appellant or the department may file with the secretary or the secretary's designee a written petition for review of the initial decision and order. The petition for review shall set forth in detail the basis for the requested review and shall be mailed by the petitioning party to the other party by certified or registered mail to the last known address of the party.

The petition shall be based on any of the following causes materially affecting the substantial rights of the petitioner:

(a) Irregularity in the proceedings of the hearing examiner or adverse party, or any order of the hearing examiner, or abuse of discretion, by which the moving party was prevented from having a fair hearing;

(b) Misconduct of the prevailing party;

(c) Accident or surprise which ordinary prudence could not have guarded against;

(d) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the hearing;

(e) That there is no evidence or reasonable inference from the evidence to justify the decision, or that it is contrary to law;

(f) Error in mathematical computation;

(g) Error in law occurring at the hearing and objected to at the time by the party making the application;

(h) That the moving party is unable to perform according to the terms of the order without further clarification;

(i) That substantial justice has not been done;

(j) Fraud or misstatement of facts by any witness, which materially affects the debt;

(k) Clerical mistakes in the decision arising from oversight or omission; or

(l) That the decision and order entered because the responsible parent failed to appear at the hearing should be vacated and the matter be remanded for a hearing upon showing of the grounds enumerated in RCW 4.72-.010 or superior court civil rule 60.

In the event no petition for review is made as provided in this subsection by any party, the initial decision and order of the hearing examiner is final as of the date of filing and becomes the decision and order of the secretary. No appeal may be taken therefrom to the courts and the debt created is subject to collection action as authorized by this chapter.

After the receipt of a petition for review, the secretary or the secretary's designee shall consider the initial decision and order, the petition or petitions for review, the record or any part thereof, and such additional evidence and argument as the secretary or the secretary's designee may in his or her discretion allow. The secretary or the secretary's designee may remand the proceedings to the hearing examiner for additional evidence or argument. The secretary or the secretary's designee may deny review of the initial decision and order and thereupon deny the petition or petitions at which time the initial decision and order shall be final as of the date of the denial and all parties shall forthwith be notified, in writing, of the denial, by certified mail to the last known address of the parties. Unless the petition is denied, the secretary or the secretary's designee shall review the initial decision and order and shall make the final decision and order of the department. The final decision and order shall be in writing and shall contain findings of fact and conclusions of law as to each contested issue of fact and law. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal by certified mail to the last known address of the party. The decision and order shall authorize collection action, as appropriate, under this chapter.

(6) The hearing examiner in his or her initial decision, or the secretary or the secretary's designee in review of the initial decision, shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment

made to or for the benefit of the child. In making these determinations, the hearing examiner, and the secretary or the secretary's designee, shall include in his or her considerations:

(a) All earnings and income resources of the responsible parent, including real and personal property;

(b) The earnings potential of the responsible parent;

(c) The reasonable necessities of the responsible parent;

(d) The ability of the responsible parent to borrow;

(e) The needs of the child for whom the support is sought;

(f) The amount of assistance which would be paid to the child under the full standard of need of the state's public assistance plan;

(g) The existence of other dependents; and

(h) That the child, for whom support is sought, benefits from the income and resources of the responsible parent on an equitable basis in comparison with any other minor children of the responsible parent.

If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing examiner shall enter an initial decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action. Within thirty days of entry of said decision and order, the responsible parent may petition the secretary or the secretary's designee to vacate said decision and order upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60.

(7) The final decision entered pursuant to this section shall be entered as a decision and order and shall limit the support debt to the amounts stated in said decision: *Provided*, That said decision establishing liability and/or future periodic support payments shall be superseded upon entry of a superior court order for support to the extent the superior court order is inconsistent with the hearing order or decision: *Provided further*, That in the absence of a superior court order, either the responsible parent or the department may petition the secretary or his designee for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances, to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. Said order to appear and show cause together with a copy of the petition and affidavit upon which the order is based shall be served in the manner of a summons in a civil action or by certified mail, return receipt requested, on the other party by the petitioning party. A hearing shall be set not less than fifteen nor more than thirty days from the date of service, unless extended for good cause shown. Prospective modification may be ordered, but only upon a showing of good cause and material change of circumstances. The decision and order for prospective modification entered by the hearing examiner shall be an initial decision subject to review by the secretary or the secretary's designee as provided for in this section.

(8) The hearing examiner, in making the initial decision and the secretary or the secretary's designee in the

final decision determining liability and/or future periodic support payments, shall consider the standards promulgated pursuant to RCW 74.20.270 and any standards for determination of support payments used by the superior court of the county of residence of the responsible parent.

(9) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by the hearing examiner, or the secretary or secretary's designee.

(10) "Need" as used in this section shall mean the necessary costs of food, clothing, shelter, and medical attendance for the support of a dependent child or children. The amount determined by reference to the schedule of suggested minimum contributions adopted under RCW 74.20.270, based on the earnings, resources, and property of the alleged responsible parent, shall be a rebuttable presumption of the alleged responsible parent's ability to pay and the need of the family: *Provided*, That such responsible parent shall be presumed to have no ability to pay child support under this chapter from any income received from aid to families with dependent children, supplemental security income, or continuing general assistance. [1979 1st ex.s. c 171 § 12; 1973 1st ex.s. c 183 § 25.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.060 Assertion of lien—Effect. Twenty-one days after receipt or refusal of notice of debt under provisions of RCW 74.20A.040, or twenty-one days after service of notice and finding of financial responsibility, or as otherwise appropriate under RCW 74.20A.055, or as appropriate under RCW 74.20A.270 a lien may be asserted by the secretary upon the real or personal property of the debtor. The claim of the department for a support debt, not paid when due, shall be a lien against all property of the debtor with priority of a secured creditor. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. The lien shall attach to all real and personal property of the debtor on the date of filing of such statement with the county auditor of the county in which such property is located. A lien against earnings shall attach and be effective subject to service requirements of RCW 74.20A.070 upon filing with the county auditor of the county in which the employer does business or maintains an office or agent for the purpose of doing business.

Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the state having notice of said lien any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in RCW 74.20A.090 and 74.20A.130, unless a written release or waiver signed by the secretary has been delivered to said person, firm, corporation, association, political subdivision or department of the state or unless a determination has been made in a fair hearing

pursuant to RCW 74.20A.055 or by a superior court ordering release of said support lien on the basis that no debt exists or that the debt has been satisfied. [1979 1st ex.s. c 171 § 5; 1973 1st ex.s. c 183 § 7; 1971 ex.s. c 164 § 6.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.070 Service of lien. The secretary may at any time after filing of a support lien serve a copy of said lien upon any person, firm, corporation, association, political subdivision or department of the state in possession of earnings, or deposits or balances held in any bank account of any nature which are due, owing, or belonging to said debtor. Said support lien shall be served upon the person, firm, corporation, association, political subdivision or department of the state either in the manner prescribed for the service of summons in a civil action or by certified mail, return receipt requested. No lien filed under RCW 74.20A.060 shall have any effect against earnings or bank deposits or balances unless it states the amount of the support debt accrued and unless service upon said person, firm, corporation, association, political subdivision or department of the state in possession of earnings or bank accounts, deposits or balances is accomplished pursuant to this section. [1973 1st ex.s. c 183 § 8; 1971 ex.s. c 164 § 7.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.080 Order to withhold and deliver—Issue and service—Contents—Effect—Delivery of property—Bond to release—Copy of order to be mailed or served. After service of a notice of debt as provided for in RCW 74.20A.040 stating a support debt accrued and/or accruing based upon subrogation to or assignment of the amount required to be paid under any superior court order or twenty-one days after service of the notice and finding of financial responsibility or as otherwise appropriate under RCW 74.20A.055, or as appropriate under RCW 74.20A.270, the secretary is hereby authorized to issue to any person, firm, corporation, association, political subdivision or department of the state, an order to withhold and deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision or department of the state property which is due, owing, or belonging to said debtor. The order to withhold and deliver shall state the amount of the support debt accrued, and shall state in summary the terms of RCW 74.20A.090 and 74.20A.100. The order to withhold and deliver shall be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person, firm, corporation, association, political subdivision or department of the state upon whom service has been made is hereby required to answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein. The secretary

may require further and additional answers to be completed by the person, firm, corporation, association, political subdivision or department of the state. In the event there is in the possession of any such person, firm, corporation, association, political subdivision or department of the state any property which may be subject to the claim of the department of social and health services, such property shall be withheld immediately upon receipt of the order to withhold and deliver and shall, after the twenty day period, upon demand, be delivered forthwith to the secretary. The secretary shall hold said property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision or department of the state subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary. Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement of the order to withhold and deliver. Delivery to the secretary shall serve as full acquittance and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the secretary pursuant to this chapter. The state also warrants and represents that it shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter. The foregoing is subject to the exemptions contained in RCW 74.20A.090.

The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by certified mail a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the right to petition for a hearing. This requirement is not jurisdictional, but, if the copy is not mailed or served as in this section provided, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy. [1979 1st ex.s. c 171 § 6; 1973 1st ex.s. c 183 § 9; 1971 ex.s. c 164 § 8.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.090 Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined. Whenever a support lien or order to withhold

and deliver is served upon any person, firm, corporation, association, political subdivision or department of the state asserting a support debt against earnings and there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state, any such earnings, RCW 7.33.280 shall not apply, but fifty percent of the disposable earnings shall be exempt and may be disbursed to the debtor whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there be due the debtor earnings for one week or for a longer period. The lien or order to withhold and deliver shall continue to operate and require said person, firm, corporation, association, political subdivision, or department of the state to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until the entire amount of the support debt stated in the lien or order to withhold and deliver has been withheld. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and, notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy support obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 or 74 RCW. Earnings shall specifically include all gain derived from capital, from labor, or from both combined, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. [1979 1st ex.s. c 171 § 10; 1973 1st ex.s. c 183 § 10; 1971 ex.s. c 164 § 9.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.100 Civil liability upon failure to comply with order or lien. Should any person, firm, corporation, association, political subdivision or department of the state fail to make answer to an order to withhold and deliver within the time prescribed herein; or fail or refuse to deliver property pursuant to said order; or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person; or fail or refuse to surrender upon demand property distrained under RCW 74.20A.130 or fail or refuse to honor an assignment of wages presented by the secretary, said person, firm, corporation, association, political subdivision or department of the state shall be liable to the department in an amount equal to one hundred percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or assignment of wages, together with costs, interest, and reasonable attorney fees. [1973 1st ex.s. c 183 § 11; 1971 ex.s. c 164 § 10.]

74.20A.110 Release of excess to debtor. Whenever any person, firm, corporation, association, political subdivision or department of the state has in its possession

earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department, such person, firm, corporation, association, political subdivision or department of the state may, without liability under this chapter, release said excess to the debtor. [1979 1st ex.s. c 171 § 7; 1971 ex.s. c 164 § 11.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.120 Banks, savings and loan associations, service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of a lien or order to withhold and deliver or any other notice or document authorized by this chapter shall only be effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made. [1971 ex.s. c 164 § 12.]

74.20A.130 Distraint, seizure and sale of property subject to liens under RCW 74.20A.060, procedure. Whenever a support lien has been filed pursuant to RCW 74.20A.060, the secretary may collect the support debt stated in said lien by the distraint, seizure, and sale of the property subject to said lien. The secretary shall give notice to the debtor and any person known to have or claim an interest therein of the general description of the property to be sold and the time and place of sale of said property. Said notice shall be given to such persons by certified mail, return receipt requested or by service in the manner prescribed for the service of a summons in a civil action. A notice specifying the property to be sold shall be posted in at least two public places in the county wherein the distraint has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Said sale shall be conducted by the secretary, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the secretary may declare such property to be purchased by the department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the secretary at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the department of social and health services. In all cases of sale, as aforesaid, the secretary shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the secretary to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the debtor in said property. The proceeds of any such sale, except in those

cases wherein the property has been acquired by the department, shall be first applied by the secretary to reimbursement of the costs of distraint and sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the secretary shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the state or its political subdivisions or by the secretary for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter, there shall be exempt from distraint, seizure, and sale under this chapter such property as is exempt therefrom under the laws of this state. [1973 1st ex.s. c 183 § 12; 1971 ex.s. c 164 § 13.]

74.20A.140 Action for foreclosure of support lien—Satisfaction. Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the superior court of the county where real or personal property is or was located and the lien was filed and judgment shall be rendered in favor of the department for the amount due, with costs, and the court shall allow, as part of the costs, the moneys paid for making and filing the claim of lien, and a reasonable attorney's fee, and the court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper county to satisfy the lien and costs. The payment of the lien debt, costs and reasonable attorney fees, at any time before sale, shall satisfy the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment over for any deficiency remaining unsatisfied and further levy and sales upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the county where said property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such county. Remedies provided for herein are alternatives to remedies provided for in other sections of this chapter. [1973 1st ex.s. c 183 § 13; 1971 ex.s. c 164 § 14.]

74.20A.150 Satisfaction of lien after foreclosure proceedings instituted—Redemption. Any person owning real property, or any interest in real property, against which a support lien has been filed and foreclosure instituted, shall have the right to pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the secretary and upon such payment the secretary shall restore said property to him and all further proceedings in the said foreclosure action shall cease. Said person shall also have the right within two hundred forty days after sale of property foreclosed under RCW 74.20A.140 to redeem said property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of six percent per annum. [1973 1st ex.s. c 183 § 14; 1971 ex.s. c 164 § 15.]

74.20A.160 Secretary may set debt payment schedule, release funds in certain hardship cases. With respect to any arrearages on a support debt assessed under RCW 74.20A.040, 74.20A.055, or 74.20A.270, the secretary may at any time consistent with the income, earning capacity and resources of the debtor, set or reset a level and schedule of payments to be paid upon the debt. The secretary may, upon petition of the debtor providing sufficient evidence of hardship, after consideration of the standards established in RCW 74.20.270, release or refund moneys taken pursuant to RCW 74.20A.080 to provide for the reasonable necessities of the responsible parent or parents and minor children in the home of the responsible parent. Nothing in this section shall be construed to require the secretary to take any action which would require collection of less than the obligation for current support required under a superior court order or an administrative order or to take any action which would result in a bar of collection of arrearages from the debtor by reason of the statute of limitations. [1979 1st ex.s. c 171 § 8; 1971 ex.s. c 164 § 16.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.170 Secretary may release lien or order or return seized property—Effect. The secretary may at any time release a support lien, or order to withhold and deliver, on all or part of the property of the debtor, or return seized property without liability, if assurance of payment is deemed adequate by the secretary, or if said action will facilitate the collection of the debt, but said release or return shall not operate to prevent future action to collect from the same or other property. [1973 1st ex.s. c 183 § 15; 1971 ex.s. c 164 § 17.]

74.20A.180 Secretary may make demand, file and serve liens, when payments appear in jeopardy. If the secretary finds that the collection of any support debt based upon subrogation to or assignment of the amount of support ordered by any superior court order is in jeopardy, he may make demand under RCW 74.20A.040 for immediate payment of the support debt, and upon failure or refusal immediately to pay said support debt, he may file and serve liens pursuant to RCW 74.20A.060 and 74.20A.070, without regard to the twenty day period provided for in RCW 74.20A.040: *Provided*, That no further action under RCW 74.20A.080, 74.20A.130 and 74.20A.140 may be taken until the notice requirements of RCW 74.20A.040 are met. [1973 1st ex.s. c 183 § 16; 1971 ex.s. c 164 § 18.]

74.20A.190 Interest on debts due—Waiver. Interest of six percent per annum on any support debt due and owing to the department under RCW 74.20A.030 may be collected by the secretary. No provision of this chapter shall be construed to require the secretary to maintain interest balance due accounts and said interest may be waived by the secretary, if said waiver would facilitate the collection of the debt. [1973 1st ex.s. c 183 § 17; 1971 ex.s. c 164 § 19.]

74.20A.200 Judicial relief after administrative remedies exhausted. Any person against whose property a support lien has been filed or an order to withhold and deliver has been served pursuant to this chapter may apply for relief to the superior court of the county wherein the property is located on the basis that no support debt is due and owing. It is the intent of this chapter that jurisdictional and constitutional issues, if any, shall be subject to review, but that administrative remedies be exhausted prior to judicial review. [1979 1st ex.s. c 171 § 9; 1973 1st ex.s. c 183 § 18; 1971 ex.s. c 164 § 20.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.220 Charging off child support debts as uncollectible—Compromise—Waiver of any bar to collection. Any support debt due the department from a responsible parent which the secretary deems uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset: *Provided*, That at any time after six years from the date a support debt was incurred, the secretary may charge off as uncollectible any support debt upon which the secretary finds there is no available, practical, or lawful means by which said debt may be collected.

The department may accept offers of compromise of disputed claims or may grant partial or total charge-off of support arrears owed to the department up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred. The department shall adopt rules as to the considerations to be made in the granting or denial of partial or total charge-off and offers of compromise of disputed claims of debt for support arrears.

The responsible parent owing a support debt may execute a written extension or waiver of any statute, including but not limited to RCW 4.56.210, which may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms. [1979 1st ex.s. c 171 § 16; 1973 1st ex.s. c 183 § 20; 1971 ex.s. c 164 § 22.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.230 Employee debtor rights protected—Limitation. No employer shall discharge an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a support lien or order to withhold and deliver has been served against said employee's earnings: *Provided*, That this provision shall not apply if more than three support liens or orders to withhold and deliver are served upon the same employer within any period of twelve consecutive months. [1973 1st ex.s. c 183 § 21; 1971 ex.s. c 164 § 23.]

74.20A.240 Assignment of earnings to be honored—Effect. Any person, firm, corporation, association, political subdivision or department of the state employing a person owing a support debt or obligation, shall honor, according to its terms, a duly executed assignment of earnings presented by the secretary as a

plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the secretary. Payment of moneys pursuant to an assignment of earnings presented by the secretary shall serve as full acquittance under any contract of employment, and the state warrants and represents it shall defend and hold harmless such action taken pursuant to said assignment of earnings. The secretary shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received. [1973 1st ex.s. c 183 § 22; 1971 ex.s. c 164 § 24.]

74.20A.250 Receipt of public assistance for a child deemed as appointment of secretary to act as attorney, endorse drafts. By accepting public assistance, the recipient is deemed, without the necessity of signing any document, to have appointed the secretary as his or her true and lawful attorney in fact to act in his or her name, place, and stead to perform the specific act of endorsing any and all drafts, checks, money orders or other negotiable instruments representing support payments which are received on behalf of said child or children as reimbursement for the public assistance moneys previously paid to said recipient. [1979 1st ex.s. c 171 § 20; 1973 1st ex.s. c 183 § 23; 1971 ex.s. c 164 § 25.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.260 Industrial insurance disability compensation payments subject to lien and order to withhold and deliver. One hundred percent of the temporary total disability payments and permanent total disability compensation to a workman allocated by RCW 51.32.090 and 51.32.060 respectively to the spouse and children of a workman, and forty percent of the net proceeds of payments to a workman for permanent partial disability under RCW 51.32.080 shall not be classified as "earnings" but shall be subject to lien or order to withhold and deliver and said lien or order to withhold and deliver shall continue to operate and require any political subdivision or department of the state to withhold the above stated portions at each subsequent disbursement or receipt interval until the entire amount of the support debt stated in the lien or order to withhold and deliver has been withheld. [1973 1st ex.s. c 183 § 24.]

74.20A.270 Department claim for support moneys—Service—Answer—Hearing and review—Moneys not subject to claim. The secretary may issue a notice of support debt to any person, firm, corporation, association or political subdivision of the state of Washington or any officer or agent thereof who is in possession of support moneys, or who has had support moneys in his or her possession at some time in the past, which support moneys were or are claimed by the department as the property of the department by assignment, subrogation, or by operation of law or legal process under chapter 74.20A RCW, if the support

moneys have not been remitted to the department as required by law.

The notice shall describe the claim of the department, stating the legal basis for the claim and shall provide sufficient detail to enable the person, firm, corporation, association or political subdivision or officer or agent thereof upon whom service is made to identify the support moneys in issue. The notice may also make inquiry as to relevant facts necessary to the resolution of the issue.

The notice may be served by certified mail, return receipt requested, or in the manner of a summons in a civil action. Upon service of the notice all moneys not yet disbursed or spent or like moneys to be received in the future are deemed to be impounded and shall be held in trust pending answer to the notice and any hearing which is requested.

The notice shall be answered under oath and in writing within twenty days of the date of service, which answer shall include true answers to the matters inquired of in the notice. The notice shall also either acknowledge the department's right to the moneys or request an administrative hearing to determine the rights to ownership of the support moneys in issue. The hearing shall be held pursuant to this section, chapter 34.04 RCW, and the rules of the department and shall be a contested case as provided for in chapter 34.04 RCW. The burden of proof to establish ownership of the support moneys claimed, including but not limited to moneys not yet disbursed or spent, is on the department.

If no answer is made within the twenty days, the department's claim shall be assessed and determined and subject to collection action as a support debt pursuant to chapter 74.20A RCW. Any such debtor may, at any time within one year from the date of service of the notice of support debt, petition the secretary or the secretary's designee for a hearing upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60. A copy of the petition shall also be served on the department. The filing of the petition shall not stay any collection action being taken, but the debtor may petition the secretary or the secretary's designee for an order staying collection action pending final decision of the secretary or the secretary's designee or the courts on any appeal made pursuant to chapter 34.04 RCW. Any moneys held and/or taken by collection action prior to the date of any such stay and any support moneys claimed by the department, including moneys to be received in the future to which the department may have a claim, shall be held in trust pending final decision and appeal, if any, to be disbursed in accordance with the final decision. The secretary or the secretary's designee shall condition the stay to provide for the trust.

If the hearing is granted it shall be an administrative hearing limited to the determination of the ownership of the moneys claimed in the notice of debt. The right to the hearing is conditioned upon holding of any funds not yet disbursed or expended or to be received in the future in trust pending the final order in these proceedings or during any appeal made to the courts. The secretary or the secretary's designee shall enter an appropriate order providing for the terms of the trust.

The hearing shall be a contested case as provided for in chapter 34.04 RCW and shall be held pursuant to this section, chapter 34.04 RCW, and the rules of the department. The hearing shall be promptly scheduled within thirty days from the date of receipt of the answer by the department. The hearing shall be conducted by a duly qualified hearing examiner appointed for that purpose. Hearings may be held in the county of residence of the debtor or other place convenient to the debtor.

If the debtor fails to appear at the hearing, the hearing examiner shall, upon showing of valid service, enter an initial decision and order declaring the amount of support moneys, as claimed in the notice, to be assessed and determined and subject to collection action. Within thirty days of entry of the decision and order the debtor may petition the secretary or the secretary's designee to vacate the decision and order upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60.

The hearing and review process shall be as provided for in RCW 74.20A.055.

If, at any time, the superior court enters judgment for an amount of debt at variance with the amount determined by the final order in these proceedings, the judgment shall supersede the final order in these proceedings. Any debt determined by the superior court in excess of the amount determined by the final order in these proceedings shall be the property of the department as assigned under 42 U.S.C. 602(A)(26)(a), RCW 74.20.040, 74.20A.250, 74.20.320, or 74.20.330. The department may, despite any final order in these proceedings, take action pursuant to chapters 74.20 or 74.20A RCW to obtain such a judgment or to collect moneys determined by such a judgment to be due and owing.

If public assistance moneys have been paid to a parent for the benefit of that parent's minor dependent children, debt under this chapter shall not be incurred by nor at any time be collected from that parent because of that payment of assistance. Nothing in this section prohibits or limits the department from acting pursuant to RCW 74.20.320 and this section to assess a debt against a recipient or ex-recipient for receipt of support moneys paid in satisfaction of the debt assigned under RCW 74.20.330 which have been assigned to the department but were received by a recipient or ex-recipient from another responsible parent and not remitted to the department. The department may not take collection action during such period of time as the public assistance recipient remains in that status. Payments not credited against the department's debt pursuant to RCW 74.20.101 may not be assessed or collected under this section. [1979 1st ex.s. c 171 § 18.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.280 Department to respect privacy of recipients. While discharging its responsibilities to enforce the support obligations of responsible parents, the department shall respect the right of privacy of recipients of public assistance and of other persons. Any inquiry about sexual activity shall be limited to that necessary to resolve a genuine dispute about the parentage of a child.

[Title 74 RCW (1979 Ed.)—p 58]

When a custodial mother has informed the department that a particular man is the father of her child, the department shall make no further inquiry into her personal life unless the man so identified has denied that he is the father of such child. [1979 1st ex.s. c 171 § 23.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.290 Person requesting hearing must advise department of current address. Whenever any person requests an administrative hearing under RCW 74.20A.055 or 74.20A.270, after the department has notified the person of the requirements of this section, it shall be the responsibility of the person to notify the department of the person's mailing address at the time the request for hearing is made and also to notify the department of any subsequent change of mailing address during the pendency of the action and any appeal made therefrom to the courts. Whenever the person has a duty under this section to advise the department of the person's mailing address, mailing by the department by certified mail to the person's last known address constitutes service as required by chapters 74.20A and 34.04 RCW. [1979 1st ex.s. c 171 § 21.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

74.20A.900 Severability—Alternative when method of notification held invalid. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

If any method of notification provided for in this chapter is held invalid, service as provided for by the laws of the state of Washington for service of process in a civil action shall be substituted for the method held invalid. [1971 ex.s. c 164 § 27.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.910 Savings clause. The repeal of RCW 74.20A.050 and the amendment of RCW 74.20A.030 and 74.20A.250 by this 1979 act is not intended to affect any existing or accrued right, any action or proceeding already taken or instituted, any administrative action already taken, or any rule, regulation, or order already promulgated. The repeal and amendments are not intended to revive any law heretofore repealed. [1979 1st ex.s. c 171 § 27.]

Severability—1979 1st ex.s. c 171: See note following RCW 74.20.300.

Chapter 74.22

WORK INCENTIVE PROGRAM FOR RECIPIENTS OF PUBLIC ASSISTANCE

Sections
74.22.010

Purpose—Program consistent with federal law, when.

- 74.22.020 Employables, others, referred to department of employment security.
- 74.22.030 Employability plan—Service categories.
- 74.22.040 Special work projects—Agreements, requisites of.
- 74.22.050 Special work projects—Participants in project, wages—Interdepartmental payments—Supplemental earnings payments.
- 74.22.060 Training, incentive payments for—Federal law controls.
- 74.22.070 Payment of costs incidental to participation in program authorized.
- 74.22.080 Good cause for refusal of employment under program.
- 74.22.090 Good cause for refusal to participate in training or a special work project under program.
- 74.22.100 Refusal to participate as basis for denying public assistance—Procedure.
- 74.22.110 Transfer of funds between departments authorized—Rules and regulations.
- 74.22.120 Acceptance of funds authorized.

74.22.010 Purpose—Program consistent with federal law, when. The purpose of this chapter is to provide every recipient of public assistance the opportunity to find and prepare for employment: *Provided*, That recipients of aid to families with dependent children may be subject to other similar work incentive programs. As to recipients of federal-aid assistance, the employment program shall be consistent with federal law and requirements entitling the state to matching funds. [1969 c 14 § 1.]

Work incentive program for recipients of aid to families with dependent children: Chapter 74.23 RCW.

74.22.020 Employables, others, referred to department of employment security. The department of social and health services shall seek to promptly refer to the department of employment security all employable recipients and such others as are selected as being appropriate for referral in accordance with the criteria and standards established by the department of social and health services under the employment program set forth in this chapter. [1979 c 141 § 372; 1969 c 14 § 2.]

74.22.030 Employability plan—Service categories. The employment security department shall seek to develop an employability plan for such persons referred to it under RCW 74.22.020 and determine whether such individuals can be placed in one of the following three service categories: (1) Employment in the regular economy, (2) institutional and work experience training likely to lead to regular employment, or (3) a program of special work projects for individuals for whom a job in the regular economy cannot be found, in accordance with the criteria and standards established by the employment security department pursuant to the employment program. [1969 c 14 § 3.]

74.22.040 Special work projects—Agreements, requisites of. In order to develop special work projects under the employment program set forth in this chapter, the employment security department is authorized to enter into agreements with public agencies and private nonprofit organizations, and with respect to developing

special work projects for Indians on a reservation, with the respective Indian tribes represented on such reservation. The work provided thereunder must serve a useful public purpose and be such that would not otherwise be performed by regular employees. [1969 c 14 § 4.]

74.22.050 Special work projects—Participants in project, wages—Interdepartmental payments—Supplemental earnings payments. With respect to those individuals who are participating in a special work project established under the employment program, set forth in this chapter, the department of social and health services is authorized to pay the employment security department the amount of assistance the participant would otherwise be eligible to receive under his particular category of assistance or eighty percent of the participant's earnings under the project, whichever is lesser. These payments will be used by the employment security department under the special works contracts as wages to the individual participant. The department of social and health services will supplement any earnings so received by payments to the extent that such payments, when added to the earnings, will equal the amount of assistance he would otherwise qualify for under his particular category of assistance had he not participated in the project, plus twenty percent of his earnings from the project. [1979 c 141 § 373; 1969 c 14 § 5.]

74.22.060 Training, incentive payments for—Federal law controls. When permitted by federal law, the employment security department is authorized to pay to any participant under service category (2), of RCW 74.22.030, training, an incentive payment of not more than thirty dollars per month. Such incentive payments may be disregarded in determining the needs of such person under his particular category of assistance. [1969 c 14 § 6.]

74.22.070 Payment of costs incidental to participation in program authorized. The department of social and health services is authorized to pay or consider expenses for costs incidental to participation in any program under this chapter including necessary child care. [1979 c 141 § 374; 1969 c 14 § 7.]

74.22.080 Good cause for refusal of employment under program. Good cause for refusal of employment shall be deemed to exist under this chapter when: (1) The wage rate of the offered employment is substantially less favorable than that which prevails for similar work in the locality, or (2) the job is available because of a labor dispute, or (3) the job is not within the physical or mental capacity of the person, as established, when necessary, by competent professional authority, or (4) acceptance would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (5) such employment would be inconsistent with the declared intent and purpose of this chapter. [1969 c 14 § 8.]

74.22.090 Good cause for refusal to participate in training or a special work project under program. Good cause for refusal to participate in training or a special work project shall be deemed to exist under this chapter, when: (1) Participation would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (2) participation will be unreasonable because the assignment would not be within the physical or mental capacity of the person as established, when necessary, by competent professional authority, or (3) such participation would be inconsistent with the declared intent and purpose of this chapter. [1969 c 14 § 9.]

74.22.100 Refusal to participate as basis for denying public assistance—Procedure. The employment security department shall notify the department of social and health services whenever any person referred under the employment program provided for in this chapter refuses to accept employment or participate in training or a special work project. If the department of social and health services determines that any such person has refused employment or participation in the program without good cause, assistance shall be denied to such person. [1979 c 141 § 375; 1969 c 14 § 10.]

74.22.110 Transfer of funds between departments authorized—Rules and regulations. The employment security department and the department of social and health services are authorized to transfer funds between the two departments and to adopt rules and regulations necessary to carry out the purpose and provisions of this chapter. [1979 c 141 § 376; 1969 c 14 § 11.]

74.22.120 Acceptance of funds authorized. The state of Washington is hereby authorized to accept federal, private, or public funds from any source, including but not limited to funds available pursuant to the Manpower Development and Training Act of 1962, as amended, to carry out the purposes of this chapter. [1969 c 14 § 12.]

Chapter 74.23

WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN

Sections

74.23.005	Compliance with federal act.
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74.23.050	Department's scope in placement of referrals.
74.23.060	Training incentives paid disregarded for public assistance purposes.
74.23.070	Special work projects—Participants' wages—Interdepartmental payments—Supplemental earnings payments.
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74.23.090	Good cause for refusal to participate in training or a special work project under program.
74.23.100	Refusal to participate as basis for denying public assistance—Procedure—Notice—Appeal—Hearings.
74.23.110	Refusal to participate as basis for denying public assistance—Payments discontinued, when—Protective payments.
74.23.120	Departmental authorization—Transfer of funds between departments—Rules and regulations.
74.23.900	Severability—Conflict with federal requirements.

74.23.005 Compliance with federal act. The legislature hereby expresses its intention to comply with the requirements under the federal social security act, as amended, creating a work incentive program for recipients of aid to families with dependent children. [1969 c 15 § 1.]

74.23.010 Purpose. The purpose of this chapter is to establish a program utilizing all available manpower services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order to secure for such individuals (1) employment in the regular economy, (2) institutional and work experience training likely to lead to regular employment, and (3) participation in special work projects for those individuals for whom a job in the regular economy cannot be found, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this chapter will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families. [1969 c 15 § 2.]

74.23.020 Departments authorized to participate in and administer program consistent with federal law. The employment security department and the department of social and health services are hereby authorized to participate in and administer the work incentive program for recipients of public assistance consistent with the provisions of the federal social security act, as amended. [1979 c 141 § 377; 1969 c 15 § 3.]

74.23.030 Institutional and training programs and special work projects—Requisites of. The institutional and work experience training programs and special work projects developed under this chapter shall be confined to programs which serve a useful public purpose, do not result either in displacement of regular workers or in the performance of work that would otherwise be performed by employees of public or private agencies, institutions, or organizations, except in cases of projects which involve emergencies or which are generally of a nonrecurring nature. [1969 c 15 § 4.]

74.23.040 Individuals referred to appropriate public agencies. The department of social and health services shall promptly seek to refer individuals who are selected

as being appropriate for referral to the employment security department or other appropriate agencies for participation under the work incentive program in accordance with criteria and standards established by the department of social and health services. [1979 c 141 § 378; 1969 c 15 § 5.]

74.23.050 Department's scope in placement of referrals. The employment security department shall seek to place such persons referred to it in employment in the regular economy, in institutional and work experience training likely to lead to regular employment, and in participation in special work projects in accordance with criteria and standards established by the employment security department pursuant to the work incentive program. [1969 c 15 § 6.]

74.23.060 Training incentives paid disregarded for public assistance purposes. Training incentives paid under the program shall be disregarded in determining the needs of the individual for public assistance, consistent with the federal social security act. [1969 c 15 § 7.]

74.23.070 Special work projects—Participants' wages—Interdepartmental payments—Supplemental earnings payments. With respect to those individuals who are participating in a special work project established under the work incentive program, the department of social and health services is authorized to pay the employment security department the amount of assistance the participant would otherwise be eligible to receive under aid to families with dependent children or eighty percent of a participant's earnings under the project, whichever is lesser. These payments will be used by the employment security department under the special work contracts as wages to the individual participant. The department of social and health services will supplement any earnings so received by payments to the extent that such payments, when added to the earnings, will equal the amount of assistance he would otherwise qualify for under aid to families with dependent children had he not participated in the project, plus twenty percent of his earnings from the project. [1979 c 141 § 379; 1969 c 15 § 8.]

74.23.080 Good cause for refusal of employment under program. Good cause for refusal of employment shall be deemed to exist under this chapter when: (1) The wage rate of the offered employment is substantially less favorable than that which prevails for similar work in the locality, or (2) the job is available because of a labor dispute, or (3) the job is not within the physical or mental capacity of the person, as established, when necessary, by competent professional authority, or (4) acceptance would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (5) such employment would be inconsistent with the declared intent and purpose of this chapter. [1969 c 15 § 9.]

74.23.090 Good cause for refusal to participate in training or a special work project under program. Good cause for refusal to participate in training or a special work project under this chapter shall be deemed to exist, when: (1) Participation would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (2) participation would be unreasonable because the assignment is not suited to the person's abilities or potential, or will not lead to realistic employment opportunities suited to the person's ability or potential, or (3) such participation would be inconsistent with the declared intent and purpose of this chapter. [1969 c 15 § 10.]

74.23.100 Refusal to participate as basis for denying public assistance—Procedure—Notice—Appeal—Hearings. (1) Whenever any person referred to the employment security department under this work incentive program refuses to accept employment or participate in training or participate in a special work project without good cause as determined by the employment security department, he shall be notified in writing by said department of its determination which shall be served upon him personally or by mail. Unless appealed in writing within ten days from the date of receipt of such written determination, it shall become final.

(2) To the extent permitted by the federal social security act, as amended, the manner and conduct of hearings and administrative appeals concerning written determinations issued pursuant to this chapter shall be in accordance with hearings and administrative appeals held pursuant to the employment security act, Title 50 of the Revised Code of Washington. [1969 c 15 § 11.]

74.23.110 Refusal to participate as basis for denying public assistance—Payments discontinued, when—Protective payments. Upon notification by the employment security department to the department of social and health services that there has been a final determination that a person referred under this work incentive program has refused without good cause to accept employment or to participate in training or participate in a special work project, the department of social and health services, in accordance with the federal social security act, as amended, shall discontinue the assistance payment to such person or, if counseling is accepted, may continue such assistance payments for a period of not more than sixty days: *Provided, however,* That protective payments contemplated by and authorized under the provisions of the federal social security act, as amended, shall be made in accordance therewith. [1979 c 141 § 380; 1969 c 15 § 12.]

74.23.120 Departmental authorization—Transfer of funds between departments—Rules and regulations. The employment security department and the department of social and health services are authorized to do all things necessary to effectuate the work incentive program on the state level in accordance with federal requirements contained in the federal social security act,

as amended, and to that extent are authorized to transfer funds between the two departments and to adopt rules and regulations necessary to carry out the purpose and provisions of this chapter. [1979 c 141 § 381; 1969 c 15 § 13.]

74.23.900 Severability—Conflict with federal requirements. If any part of this chapter shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agency directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter and its application to the agencies concerned. [1969 c 15 § 14.]

Chapter 74.32

ADVISORY COMMITTEES

Sections

74.32.100	Advisory committee on vendor rates—Created—Members—Chairman.
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74.32.120	Advisory committee on vendor rates—Meetings—Travel expenses.
74.32.130	Advisory committee on vendor rates—Powers and duties.
74.32.140	Investigation to determine if additional requirements or standards affecting vendor group.
74.32.150	Investigation to determine if additional requirements or standards affecting vendor group—Scope of investigation.
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74.32.170	Investigation to determine if additional requirements or standards affecting vendor group—Prevailing wage scales and fringe benefit programs to be considered.
74.32.180	Investigation to determine if additional requirements or standards affecting vendor group—Additional factors to be accounted for.

74.32.100 Advisory committee on vendor rates—Created—Members—Chairman. There is hereby created a governor's advisory committee on vendor rates. The committee shall be composed of nine members appointed by the governor. In addition, the secretary of the department of social and health services or his designee shall be an ex officio member of the committee. Members shall be selected on the basis of their interest in problems related to the department of social and health services, and no less than two members shall be licensed certified public accountants. The members shall serve at the pleasure of the governor. The governor shall select one member to serve as chairman of the committee and he shall serve as such at the pleasure of the governor. [1971 ex.s. c 87 § 1; 1969 ex.s. c 203 § 1.]

74.32.110 Advisory committee on vendor rates—"Vendor rates" defined. The term "vendor rates" as used

throughout RCW 74.32.100 through 74.32.130 shall include, but not be limited to, the cost reimbursement basis upon which all participating hospital organizations receive compensation. [1969 ex.s. c 203 § 2.]

74.32.120 Advisory committee on vendor rates—Meetings—Travel expenses. The committee shall meet at least a total of three and no more than twelve times per year at such specific times and places as may be determined by the chairman. Members shall be entitled to reimbursement for travel expenses as provided for in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 170; 1969 ex.s. c 203 § 3.]

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

74.32.130 Advisory committee on vendor rates—Powers and duties. The committee shall have the following powers and duties:

(1) Study and review the methods and procedures for establishing the rates and/or fees of all vendors of goods, services and care purchased by the department of social and health services including all medical and welfare care and services.

(2) Provide each professional and trade association or other representative groups of each of the service areas, the opportunity to present to the committee their evidence for justifying the methods of computing and the justification for the rates and/or fees they propose.

(3) The committee shall have the authority to request vendors to appoint a fiscal intermediary to provide the committee with an evaluation and justification of the method of establishing rates and/or fees.

(4) Prepare and submit a written report to the governor, at least sixty days prior to each session of the legislature, which contains its findings and recommendations concerning the methods and procedures for establishing rates and/or fees and the specific rates and/or fees that should be paid by the department of social and health services to the various designated vendors. This report shall include the suggested effective dates of the recommended rates and/or fees when appropriate.

The vendors shall furnish adequate documented evidence related to the cost of providing their particular services, care or supplies, in the form, to the extent and at such times as the committee may determine.

The chairman of this committee, shall have the same authority as provided in RCW 74.04.290 as it is now or hereafter amended. [1971 ex.s. c 87 § 2; 1969 ex.s. c 203 § 4.]

74.32.140 Investigation to determine if additional requirements or standards affecting vendor group. Before completing its recommendations regarding rates, the governor's committee on vendor rates shall conduct an extensive investigation to determine the nature and extent of any additional requirements or standards established which affect any vendor group if the same have not been fully considered and provided for in the committee's last recommendations, and shall similarly determine the nature and effect of any additional

requirements or standards which are expected to be imposed during the period covered by the committee's recommendations. [1971 ex.s. c 298 § 1.]

74.32.150 Investigation to determine if additional requirements or standards affecting vendor group—Scope of investigation. The additional requirements and standards referred to in RCW 74.32.140 shall include but shall not be limited to changes in minimum wage or overtime provisions, changes in building code or facility requirements for occupancy or licensing, and changes in requirements for staffing, available equipment, or methods and procedures. [1971 ex.s. c 298 § 2.]

74.32.160 Investigation to determine if additional requirements or standards affecting vendor group—Changes investigated regardless of source. The committee shall investigate such changes whether their source is or may be federal, state, or local governmental agencies, departments and officers, and shall give full consideration to the cost of such changes and expected changes in the vendor rates recommended. [1971 ex.s. c 298 § 3.]

74.32.170 Investigation to determine if additional requirements or standards affecting vendor group—Prevailing wage scales and fringe benefit programs to be considered. The committee shall also consider prevailing wage scales and fringe benefit programs affecting the vendor's industry or affecting related or associated industries or vendor classes, and shall consider in its rate recommendations a scale of competitive wages, to assure the availability of necessary personnel in each vendor program. [1971 ex.s. c 298 § 4.]

74.32.180 Investigation to determine if additional requirements or standards affecting vendor group—Additional factors to be accounted for. The committee shall further fully account in its recommended rate structure for the effect of changes in payroll and property taxes[,] accurate costs of insurance, and increased or lowered costs of borrowing money. [1971 ex.s. c 298 § 5.]

Chapter 74.36

WASHINGTON STATE COUNCIL ON AGING

Sections

74.36.100	Department to participate in and administer Federal Older Americans Act of 1965.
74.36.110	Community programs and projects for the aging—Allotments for—Purpose.
74.36.120	Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval.
74.36.130	Community programs and projects for the aging—State funding, limitations—Payments, type.

74.36.100 Department to participate in and administer Federal Older Americans Act of 1965. The department of social and health services is authorized to take advantage of and participate in the Federal Older

Americans Act of 1965 (Public Law 89-73, 89th Congress, 79 Stat. 220) and to accept, administer and disburse any federal funds that may be available under said act. [1970 ex.s. c 18 § 27; 1967 ex.s. c 33 § 1.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

Departmental advisory committees: RCW 74.32.100–74.32.180.

74.36.110 Community programs and projects for the aging—Allotments for—Purpose. The secretary of the department of social and health services or his designee is authorized to allot for such purposes all or a portion of whatever state funds the legislature appropriates or are otherwise made available for the purpose of matching local funds dedicated to community programs and projects for the aging. The purpose of RCW 74.36.110 through 74.36.130 is to stimulate and assist local communities to obtain federal funds made available under the Federal Older Americans Act of 1965 as amended. [1971 ex.s. c 169 § 10.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.36.120 Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval. (1) The secretary or his designee shall adopt and set forth standards for determining the eligibility and approval of community projects and priorities therefor, and shall have final authority to approve or deny such projects and funding requested under RCW 74.36.110 through 74.36.130.

(2) Only community project proposals submitted by local public agencies, by private nonprofit agencies or organizations, or by public or other nonprofit institutions of higher education, shall be eligible for approval.

(3) Any community project applicant whose application for approval is denied will be afforded an opportunity for an informal hearing before the secretary or his designee, but the administrative procedure act, chapter 34.04 RCW, shall not apply. [1971 ex.s. c 169 § 11.]

74.36.130 Community programs and projects for the aging—State funding, limitations—Payments, type. (1) State funds made available under RCW 74.36.110 through 74.36.130 for any project shall not exceed fifty per centum of the nonfederal share of the costs. To the extent that federal law permits, and the secretary or his designee deems appropriate, the local community share and/or the state share may be in the form of cash or in-kind resources.

(2) Payments made under RCW 74.36.110 through 74.36.130 may be made in advance or by way of reimbursement, and in such installments and on such conditions as the secretary or his designee may determine, including provisions for adequate accounting systems, reasonable record retention periods and financial audits. [1971 ex.s. c 169 § 12.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

Chapter 74.38

SENIOR CITIZENS SERVICES ACT

Sections

74.38.010	Legislative recognition—Public policy.
74.38.020	Definitions.
74.38.030	Administration of community based services program—Area plans—Annual state plan—Determination of low income eligible persons.
74.38.040	Scope and extent of community based services program.
74.38.050	Availability of services for persons other than those of low income—Utilization of volunteers and public assistance recipients—Private agencies—Well-adult clinics—Fees schedule, exceptions.
74.38.060	Expansion of federal programs authorized.
74.38.061	Expansion of federal programs authorized.
74.38.070	Reduced utility rates for low income senior citizens.
74.38.900	Short title.
74.38.905	Severability—1975-'76 2nd ex.s. c 131.

74.38.010 Legislative recognition—Public policy. The legislature recognizes the need for the development and expansion of alternative services and forms of care for senior citizens. Such services should be designed to restore individuals to, or maintain them at, the level of independent living they are capable of attaining. These alternative services and forms of care should be designed to both complement the present forms of institutional care and create a system whereby appropriate services can be rendered according to the care needs of an individual. The provision of service should continue until the client is able to function independently, moves to an institution, moves from the state, dies, or withdraws from the program.

Therefore, it shall be the policy of this state to develop, expand, or maintain those programs which provide an alternative to institutional care when that form of care is premature, unnecessary, or inappropriate. [1977 ex.s. c 321 § 1; 1975-'76 2nd ex.s. c 131 § 1.]

Termination—1977 ex.s. c 321: "The provisions of *this 1977 amendatory act shall terminate on June 30, 1979, unless otherwise provided by law." [1977 ex.s. c 321 § 7.]

*Reviser's note: "[T]his 1977 amendatory act" consists of RCW 74.38.070 and the 1977 amendments to RCW 74.38.010, 74.38.020, 74.38.040, and 74.38.050. The termination instruction, 1977 ex.s. c 321 § 7, was repealed by 1979 1st ex.s. c 147 § 2 which took affect July 1, 1979.

74.38.020 Definitions. As used in this chapter, the following words and phrases shall have the following meaning unless the content clearly requires otherwise:

(1) "Area agency" means an agency, other than a state agency, designated by the department to carry out programs or services approved by the department in a designated geographical area of the state.

(2) "Area plan" means the document submitted annually by an area agency to the department for approval which sets forth (a) goals and measurable objectives, (b) review of past expenditures and accounting of revenue for the previous year, (c) estimated revenue and expenditures for the ensuing year, and (d) the planning, coordination, administration, social services, and evaluation activities to be undertaken to carry out the purposes of the Older Americans Act of 1965 (42 U.S.C. Sec. 3024 et. seq.), as now or hereafter amended.

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

(4) "Office" shall mean the office on aging which is the organizational unit within the department responsible for coordinating and administering aging problems.

(5) "Eligible persons" means senior citizens who are:

(a) Sixty-five years of age or more; or

(b) Sixty years of age or more and are either (i) non-employed, or (ii) employed for twenty hours per week or less; and

(c) In need of services to enable them to remain in their customary homes because of physical, mental, or other debilitating impairments.

(6) "Low income" means initial resources or subsequent income at or below forty percent of the state median income as promulgated by the secretary of the United States department of health, education and welfare for Title XX of the Social Security Act, or, in the alternative, a level determined by the department and approved by the legislature.

(7) "Income" shall have the same meaning as RCW 74.04.005(12), as now or hereafter amended; except, that money received from RCW 74.38.060 shall be excluded from this definition.

(8) "Resource" shall have the same meaning as RCW 74.04.005(11), as now or hereafter amended.

(9) "Need" shall have the same meaning as RCW 74.04.005(13), as now or hereafter amended. [1977 ex.s. c 321 § 2; 1975-'76 2nd ex.s. c 131 § 2.]

74.38.030 Administration of community based services program—Area plans—Annual state plan—Determination of low income eligible persons. (1) The program of community based services authorized under this chapter shall be administered by the department. Such services may be provided by the department or through purchase of service contracts, vendor payments or direct client grants.

The department shall, under stipend or grant programs provided under RCW 74.38.060, utilize, to the maximum staffing level possible, eligible persons in its administration, supervision, and operation.

(2) The department shall be responsible for planning, coordination, monitoring and evaluation of services provided under this chapter but shall avoid duplication of services.

(3) The department may designate area agencies in cities of not less than twenty thousand population or in regional areas within the state. These agencies shall submit area plans, as required by the department. They shall also submit, in the manner prescribed by the department, such other program or fiscal data as may be required.

(4) The department shall develop an annual state plan pursuant to the Older Americans Act of 1965, as now or hereafter amended. This plan shall include, but not be limited to:

(a) Area agencies' programs and services approved by the department;

(b) Other programs and services authorized by the department; and

(c) Coordination of all programs and services.

(5) The department shall establish rules and regulations for the determination of low income eligible persons. Such determination shall be related to need based on the initial resources and subsequent income of the person entering into a program or service. This determination shall not prevent the eligible person from utilizing a program or service provided by the department or area agency. However, if the determination is that such eligible person is nonlow income, the provision of RCW 74.38.050 shall be applied as of the date of such determination. [1975-'76 2nd ex.s. c 131 § 3.]

74.38.040 Scope and extent of community based services program. The community based services for low income eligible persons provided by the department or the respective area agencies may include:

(1) Access services designed to provide identification of eligible persons, assessment of individual needs, reference to the appropriate service, and follow-up service where required. These services shall include information and referral, outreach, transportation and counseling;

(2) Day care offered on a regular, recurrent basis. General nursing, rehabilitation, personal care, nutritional services, social casework, mental health as provided pursuant to chapter 71.24 RCW and/or limited transportation services may be made available within this program;

(3) In-home care for persons, including basic health care; performance of various household tasks and other necessary chores, or, a combination of these services;

(4) Counseling on death for the terminally ill and care and attendance at the time of death; except, that this is not to include reimbursement for the use of life-sustaining mechanisms;

(5) Health services which will identify health needs and which are designed to avoid institutionalization; assist in securing admission to medical institutions or other health related facilities when required; and, assist in obtaining health services from public or private agencies or providers of health services. These services shall include health screening and evaluation, in-home services, health education, and such health appliances which will further the independence and well-being of the person;

(6) The provision of low cost, nutritionally sound meals in central locations or in the person's home in the instance of incapacity. Also, supportive services may be provided in nutritional education, shopping assistance, diet counseling and other services to sustain the nutritional well-being of these persons;

(7) The provisions of services to maintain a person's home in a state of adequate repair, insofar as is possible, for their safety and comfort. These services shall be limited, but may include housing counseling, minor repair and maintenance, and moving assistance when such repair will not attain standards of health and safety, as determined by the department;

(8) Civil legal services, as limited by RCW 2.50.100, for counseling and representation in the areas of housing, consumer protection, public entitlements, property, and related fields of law. [1977 ex.s. c 321 § 3; 1975-'76 2nd ex.s. c 131 § 4.]

74.38.050 Availability of services for persons other than those of low income—Utilization of volunteers and public assistance recipients—Private agencies—Well-adult clinics—Fee schedule, exceptions. The services provided in RCW 74.38.040 may be provided to nonlow income eligible persons: *Provided*, That the department and the area agencies on aging shall utilize volunteer workers and public assistant recipients to the maximum extent possible to provide the services provided in RCW 74.38.040: *Provided, further*, That the department and the area agencies shall utilize the bid procedure pursuant to chapter 43.19 RCW for providing such services to low income and nonlow income persons whenever the services to be provided are available through private agencies at a cost savings to the department. The department shall establish a fee schedule based on the ability to pay and graduated to full recovery of the cost of the service provided; except, that nutritional services, health screening, and access services provided in RCW 74.38.040 shall not be based on need and no fee shall be charged; except further, notwithstanding any other provision of this chapter, that well adult clinic services may be provided in lieu of health screening services if such clinics use the fee schedule established by this section. [1979 1st ex.s. c 147 § 1; 1977 ex.s. c 321 § 4; 1975-'76 2nd ex.s. c 131 § 5.]

Effective date—1979 1st ex.s. c 147: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 1st ex.s. c 147 § 4.] This applies to RCW 74.38.050.

74.38.060 Expansion of federal programs authorized. The department may expand the foster grandparent, senior companion and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-pocket expenses, or wages to perform services in the community. [1975-'76 2nd ex.s. c 131 § 6.]

74.38.061 Expansion of federal programs authorized. The department may expand the foster grandparent, senior companion, and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-pocket expenses, or wages to perform services in the community. [1977 ex.s. c 321 § 5.]

74.38.070 Reduced utility rates for low income senior citizens. Notwithstanding any other provision of law, any county, city, town, municipal corporation, or quasi municipal corporation providing utility services may provide such services at reduced rates for low income senior citizens: *Provided*, That, for the purposes of this section, "low income senior citizen" shall be defined by appropriate ordinance or resolution adopted by the governing body of the county, city, town, municipal corporation, or quasi municipal corporation providing the utility services. Any reduction in rates granted in whatever manner to low income senior citizens in one part of a service area shall be uniformly extended to low income

senior citizens in all other parts of the service area. [1979 c 116 § 1.]

74.38.900 Short title. Sections 1 through 6 of this act shall be known and may be cited as the "Senior Citizens Services Act". [1975-'76 2nd ex.s. c 131 § 7.]

74.38.905 Severability—1975-'76 2nd ex.s. c 131. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 131 § 10.]

Chapter 74.42

NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS (Effective January 1, 1980)

Sections

74.42.010	Definitions.
74.42.020	Minimum standards.
74.42.030	Resident to receive statement of rights, rules, services, and charges.
74.42.040	Resident's rights regarding medical condition, care, and treatment.
74.42.050	Residents to be treated with consideration, respect—Complaints.
74.42.060	Management of residents' financial affairs.
74.42.070	Privacy.
74.42.080	Confidentiality of records.
74.42.090	Work tasks by residents.
74.42.100	Personal mail.
74.42.110	Freedom of association—Limits.
74.42.120	Personal possessions.
74.42.130	Individual financial records.
74.42.140	Prescribed plan of care—Treatment, medication, diet services.
74.42.150	Plan of care—Goals—Program—Responsibilities—Review.
74.42.160	Nursing care.
74.42.170	Rehabilitative services.
74.42.180	Social services.
74.42.190	Activities program—Recreation areas, equipment.
74.42.200	Supervision of health care by physician.
74.42.210	Pharmacist services.
74.42.220	Contracts for professional services from outside the agency—Self-administration of medication.
74.42.230	Physician to prescribe medication.
74.42.240	Administering medication.
74.42.250	Medication stop orders—Procedure for developmentally disabled.
74.42.260	Drug storage, security, inventory.
74.42.270	Drug disposal.
74.42.280	Adverse drug reaction.
74.42.290	Meal intervals—Food handling—Utensils—Disposal.
74.42.300	Nutritionist—Menus, special diets.
74.42.310	Staff to assist developmentally disabled at meals.
74.42.320	Sanitary procedures for food preparation.
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74.42.350	Organization chart.
74.42.360	Adequate staff.
74.42.370	Licensed administrator.
74.42.380	Director of nursing services.
74.42.390	Communication system.
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74.42.410	Laundry services.
74.42.420	Resident record system.

74.42.430	Written policy guidelines.
74.42.440	Facility rated capacity not to be exceeded.
74.42.450	Residents limited to those the facility qualified to care for—Transfer or discharge of residents.
74.42.460	Organization plan and procedures.
74.42.470	Infected employees.
74.42.480	Living areas.
74.42.490	Room requirements—Waiver.
74.42.500	Toilet and bathing facilities.
74.42.510	Room for dining, recreation, social activities—Waiver.
74.42.520	Therapy area.
74.42.530	Isolation areas.
74.42.540	Building requirements.
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74.42.560	Emergency lighting for facilities housing developmentally disabled persons.
74.42.570	Health and safety requirements.
74.42.580	Penalties for violation of standards.
74.42.590	Department to approve each resident's plan of care.
74.42.600	Department inspections—Notice of noncompliance—Penalties.
74.42.610	Department to assess resident's needs.
74.42.620	Departmental rules.
74.42.900	Severability—1979 1st ex.s. c 211.
74.42.910	Construction—Conflict with federal requirements.
74.42.920	Effective date—1979 1st ex.s. c 211.

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

(1) "Department" means the department of social and health services and the department's employees.

(2) "Facility" refers to a nursing home as defined in RCW 18.51.010.

(3) "Licensed practical nurse" means a person licensed to practice practical nursing under chapter 18.78 RCW.

(4) "Medicaid" means Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

(5) "Nursing care" means that care provided by a registered nurse, a licensed practical nurse, or a nursing assistant in the regular performance of their duties.

(6) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience specified by the department.

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience.

(c) A mental health professional as defined in chapter 71.05 RCW.

(d) A mental retardation professional who is a qualified therapist or a therapist approved by the department and has specialized training or one year experience in treating or working with the mentally retarded or developmentally disabled.

(e) An occupational therapist who is a graduate of a program in occupational therapy or who has equivalent education or training.

(f) A physical therapist as defined in chapter 18.74 RCW.

(g) A social worker who is a graduate of a school of social work.

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

(7) "Registered nurse" means a person practicing nursing under chapter 18.88 RCW.

(8) "Resident" means an individual recipient of medical benefits pursuant to chapter 74.09 RCW, except as to sections 3 through 13 of this 1979 act which shall apply to all patients.

(9) "Physician's assistant" means a person practicing pursuant to chapters 18.57A and 18.71A RCW.

(10) "Nurse practitioner" means a person practicing such expanded acts of nursing as are authorized by the board of nursing pursuant to RCW 18.88.030. [1979 1st ex.s. c 211 § 1.]

74.42.020 Minimum standards. The standards in RCW 74.42.030 through 74.42.570 are the minimum standards for facilities receiving reimbursement under *chapter ... (Senate Bill No. 2335), Laws of 1979: *Provided, however,* That RCW 74.42.040, 74.42.140 through 74.42.280, 74.42.300, 74.42.360, 74.42.370, 74.42.380, 74.42.420(2), (4), (5), (6) and (7), 74.42.430(3), 74.42.450(2) and (3), 74.42.520, 74.42.530, 74.42.540, 74.42.570, and 74.42.580 shall not apply to Christian Science sanatoria facilities operated and listed or certified by The First Church of Christ, Scientist, in Boston; Massachusetts. [1979 1st ex.s. c 211 § 2.]

*Reviser's note: Senate Bill No. 2335 was not enacted in the 1979 regular or first extraordinary sessions of the legislature.

74.42.030 Resident to receive statement of rights, rules, services, and charges. Each resident or guardian, if any, shall be fully informed and receive in writing the following:

- (1) The resident's rights and responsibilities in the facility;
- (2) Rules governing resident conduct;
- (3) Services available in the facility; and
- (4) Charges for services not included in the facility's basic daily rate or not paid by Medicaid.

The facility shall provide this information before or at the time of admission and as changes occur during the resident's stay. The resident or legal guardian shall acknowledge in writing receipt of this information and any changes in the information. [1979 1st ex.s. c 211 § 3.]

74.42.040 Resident's rights regarding medical condition, care, and treatment. The facility shall insure that each resident and guardian, if any:

- (1) Is fully informed by a physician about his or her health and medical condition unless the physician decides that informing the resident is medically contraindicated and the physician documents this decision in the resident's record;
- (2) Has the opportunity to participate in his or her total care and treatment;
- (3) Has the opportunity to refuse treatment; and
- (4) Gives informed, written consent before participating in experimental research. [1979 1st ex.s. c 211 § 4.]

74.42.050 Residents to be treated with consideration, respect—Complaints. (1) Residents shall be treated with consideration, respect, and full recognition of their

dignity and individuality. Residents shall be encouraged and assisted in the exercise of their rights as residents of the facility and as citizens.

(2) A resident or guardian, if any, may submit complaints or recommendations concerning the policies of the facility to the staff and to outside representatives of the resident's choice. No facility may restrain, interfere, coerce, discriminate, or retaliate in any manner against a resident who submits a complaint or recommendation. [1979 1st ex.s. c 211 § 5.]

74.42.060 Management of residents' financial affairs.

The facility shall allow a resident or the resident's guardian to manage the resident's financial affairs. The facility may assist a resident in the management of his or her financial affairs if the resident requests assistance in writing and the facility complies with the record-keeping requirements of RCW 74.42.130 and the provisions of *chapter ... (Senate Bill No. 2335), Laws of 1979. [1979 1st ex.s. c 211 § 6.]

*Reviser's note: "Senate Bill No. 2335," see note following RCW 74.42.020.

74.42.070 Privacy. Residents shall be given privacy during treatment and care of personal needs. Married residents shall be given privacy during visits with their spouses. If both husband and wife are residents of the facility, the facility shall permit the husband and wife to share a room, unless medically contraindicated. [1979 1st ex.s. c 211 § 7.]

74.42.080 Confidentiality of records. Residents' records, including information in an automatic data bank, shall be treated confidentially. The facility shall not release information from a resident's record to a person not otherwise authorized by law to receive the information without the resident's or the resident's guardian's written consent. [1979 1st ex.s. c 211 § 8.]

74.42.090 Work tasks by residents. No resident may be required to perform services for the facility; except that a resident may be required to perform work tasks specified or included in the comprehensive plan of care. [1979 1st ex.s. c 211 § 9.]

74.42.100 Personal mail. The facility shall not open the personal mail that residents send or receive. [1979 1st ex.s. c 211 § 10.]

74.42.110 Freedom of association—Limits. Residents shall be allowed to communicate, associate, meet privately with individuals of their choice, and participate in social, religious, and community group activities unless this infringes on the rights of other residents. [1979 1st ex.s. c 211 § 11.]

74.42.120 Personal possessions. The facility shall allow residents to have personal possessions as space or security permits. [1979 1st ex.s. c 211 § 12.]

74.42.130 Individual financial records. The facility shall keep a current, written financial record for each

resident. The record shall include written receipts for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or for the resident. The resident or guardian and the resident's family shall have access to the financial record. [1979 1st ex.s. c 211 § 13.]

74.42.140 Prescribed plan of care—Treatment, medication, diet services. The facility shall care for residents by providing residents with authorized medical services which shall include treatment, medication, and diet services, and any other services contained in the comprehensive plan of care or otherwise prescribed by the attending physician. [1979 1st ex.s. c 211 § 14.]

74.42.150 Plan of care—Goals—Program—Responsibilities—Review. (1) Under the attending physician's instructions, qualified staff will establish and maintain a comprehensive plan of care for each resident which shall be kept on file by the facility and be approved by the department. The comprehensive plan contains:

- (a) Goals for each resident to accomplish;
 - (b) An integrated program of treatment, therapies and activities to help each resident achieve those goals; and
 - (c) The persons responsible for carrying out the programs in the plan.
- (2) Qualified staff shall review the comprehensive plan of care at least quarterly. [1979 1st ex.s. c 211 § 15.]

74.42.160 Nursing care. The facility shall provide the nursing care required for the classification given each resident. The nursing care shall help each resident to achieve and maintain the highest possible degree of function, self-care, and independence to the extent medically possible. [1979 1st ex.s. c 211 § 16.]

74.42.170 Rehabilitative services. (1) The facility shall provide rehabilitative services itself or arrange for the provision of rehabilitative services with qualified outside resources for each resident whose comprehensive plan of care requires the provision of rehabilitative services.

(2) The rehabilitative service personnel shall be qualified therapists, qualified therapists' assistants, or mental health professionals. Other support personnel under appropriate supervision may perform the duties of rehabilitative service personnel.

(3) The rehabilitative services shall be designed to maintain and improve the resident's ability to function independently; prevent, as much as possible, advancement of progressive disabilities; and restore maximum function. [1979 1st ex.s. c 211 § 17.]

74.42.180 Social services. (1) The facility shall provide social services, or arrange for the provision of social services with qualified outside resources, for each resident whose comprehensive plan of care requires the provision of social services.

(2) The facility shall designate one staff member qualified by training or experience to be responsible for arranging for social services in the facility or with qualified outside resources and integrating social services with other elements of the plan of care. [1979 1st ex.s. c 211 § 18.]

74.42.190 Activities program—Recreation areas, equipment. The facility shall have an activities program designed to encourage each resident to maintain normal activity and help each resident return to self care. A staff member qualified by experience or training in directing group activities shall be responsible for the activities program. The facility shall provide adequate recreation areas with sufficient equipment and materials to support the program. [1979 1st ex.s. c 211 § 19.]

74.42.200 Supervision of health care by physician. The health care of each resident shall be under the continuing supervision of a physician. The physician, physician's assistant, or nurse practitioner shall see the resident whenever necessary, but not less than once every sixty days, unless the physician decides that it is not necessary to see the resident once every sixty days and a written report of the decision signed by the physician is included in the resident's record. [1979 1st ex.s. c 211 § 20.]

74.42.210 Pharmacist services. The facility shall either employ a licensed pharmacist responsible for operating the facility's pharmacy or have a written agreement with a licensed pharmacist who will advise the facility on ordering, storage, administration, disposal, and recordkeeping of drugs and biologicals. [1979 1st ex.s. c 211 § 21.]

74.42.220 Contracts for professional services from outside the agency—Self-administration of medication. (1) If the facility does not employ a qualified professional to furnish required services, the facility shall have a written contract with a qualified professional or agency outside the facility to furnish the required services. The terms of the contract, including terms about responsibilities, functions, and objectives, shall be specified. The contract shall be signed by the administrator, or the administrator's representative, and the qualified professional.

(2) Programs of self-administration of medications are to be implemented for all residents unless contraindicated in writing in the resident's records.

(3) All contracts for these services shall require the standards in RCW 74.42.010 through 74.42.570 to be met. [1979 1st ex.s. c 211 § 22.]

74.42.230 Physician to prescribe medication. (1) The resident's attending or staff physician shall order all medications for the resident. The order may be oral or written.

(2) An oral order shall be given only to a licensed nurse, pharmacist, or another physician. The oral order shall be recorded and signed immediately by the person receiving the order. The attending physician shall sign

the record of the oral order in a manner consistent with good medical practice within forty-eight hours. [1979 1st ex.s. c 211 § 23.]

74.42.240 Administering medication. (1) No staff member may administer any medication to a resident unless the staff member is licensed to administer medication.

(2) The facility may only allow a resident to give himself or herself medication with the attending physician's permission.

(3) Medication shall only be administered to or used by the resident for whom it is ordered. [1979 1st ex.s. c 211 § 24.]

74.42.250 Medication stop orders—Procedure for developmentally disabled. (1) When the physician's order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician that the medication will be stopped at a date certain unless the medication is ordered continued by the physician. The facility shall so notify the physician every thirty days.

(2) A facility for the developmentally disabled shall have an automatic stop order on all drugs, unless such stoppage will place the patient in jeopardy. [1979 1st ex.s. c 211 § 25.]

74.42.260 Drug storage, security, inventory. (1) The facility shall store drugs under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Poisons, drugs used externally, and drugs taken internally shall be stored on separate shelves or in separate cabinets at all locations. When medication is stored in a refrigerator containing other items, the medication shall be kept in a separate compartment with proper security. All drugs shall be kept under lock and key unless an authorized individual is in attendance.

(2) The facility shall meet the drug security requirements of federal and state laws that apply to storerooms, pharmacies, and living units.

(3) If there is a drug storeroom separate from the pharmacy, the facility shall keep a perpetual inventory of receipts and issues of all drugs from that storeroom. [1979 1st ex.s. c 211 § 26.]

74.42.270 Drug disposal. Any drug that is discontinued or outdated and any container with a worn, illegible, or missing label shall be properly disposed. [1979 1st ex.s. c 211 § 27.]

74.42.280 Adverse drug reaction. Medication errors and adverse drug reactions shall be recorded and reported immediately to the practitioner who ordered the drug. The facility shall report adverse drug reactions consistent with good medical practice. [1979 1st ex.s. c 211 § 28.]

74.42.290 Meal intervals—Food handling—Utensils—Disposal. (1) The facility shall serve at least three meals, or their equivalent, daily at regular times

with not more than fourteen hours between a substantial evening meal and breakfast on the following day and not less than ten hours between breakfast and a substantial evening meal on the same day.

(2) Food shall be procured, stored, transported, and prepared under sanitary conditions in compliance with state and local regulations.

(3) Food of an appropriate quantity at an appropriate temperature shall be served in a form consistent with the needs of the resident;

(4) Special eating equipment and utensils shall be provided for residents who need them; and

(5) Food served and uneaten shall be discarded. [1979 1st ex.s. c 211 § 29.]

74.42.300 Nutritionist—Menus, special diets. (1) The facility shall have a staff member trained or experienced in food management and nutrition responsible for planning menus that meet the requirements of subsection (2) of this section and supervising meal preparation and service to insure that the menu plan is followed.

(2) The menu plans shall follow the orders of the resident's physician.

(3) The facility shall:

(a) Meet the nutritional needs of each resident;

(b) Have menus written in advance;

(c) Provide a variety of foods at each meal;

(d) Provide daily and weekly variations in the menus; and

(e) Adjust the menus for seasonal changes.

(4) If the facility has residents who require medically prescribed special diets, the menus for those residents shall be planned by a professionally qualified dietitian or reviewed and approved by the attending physician. The preparation and serving of meals shall be supervised to insure that the resident accepts the special diet. [1979 1st ex.s. c 211 § 30.]

74.42.310 Staff to assist developmentally disabled at meals. (1) A facility for the developmentally disabled shall have sufficient personnel in the dining rooms to supervise the residents, direct self-help dining skills, and to insure that each resident receives enough food.

(2) A facility for the developmentally disabled shall provide table service for all residents, including residents in wheelchairs, who are capable and willing to eat at tables. [1979 1st ex.s. c 211 § 31.]

74.42.320 Sanitary procedures for food preparation. Facilities shall have effective sanitary procedures for the food preparation staff including procedures for cleaning food preparation equipment and food preparation areas. [1979 1st ex.s. c 211 § 32.]

74.42.330 Food storage. The facility shall store dry or staple food items at an appropriate height above the floor in a ventilated room not subject to sewage or waste water backflow or contamination by condensation, leakage, rodents or vermin. Perishable foods shall be stored at proper temperatures to conserve nutritive values. [1979 1st ex.s. c 211 § 33.]

74.42.340 Administrative support—Purchasing—Inventory control. (1) The facility shall provide adequate, modern administrative support to efficiently meet the needs of residents and facilitate attainment of the facility's goals and objectives.

(2) The facility shall:

- (a) Document the purchasing process;
- (b) Adequately operate the inventory control system and stockroom;
- (c) Have appropriate storage facilities for all supplies and surplus equipment; and
- (d) Have enough trained and experienced personnel to do purchase, supply, and property control functions. [1979 1st ex.s. c 211 § 34.]

74.42.350 Organization chart. The facility shall have and keep current an organization chart showing:

- (1) The major operating programs of the facility;
- (2) The staff divisions of the facility;
- (3) The administrative personnel in charge of the programs and divisions; and
- (4) The lines of authority, responsibility, and communication of administrative personnel. [1979 1st ex.s. c 211 § 35.]

74.42.360 Adequate staff. The facility shall have staff on duty twenty-four hours daily sufficient in number and qualifications to carry out the provisions of RCW 74.42.010 through 74.42.570 and the policies, responsibilities, and programs of the facility. [1979 1st ex.s. c 211 § 36.]

74.42.370 Licensed administrator. The facility shall have an administrator who is a licensed nursing home administrator under chapter 18.52 RCW. The administrator is responsible for managing the facility and implementing established policies and procedures. [1979 1st ex.s. c 211 § 37.]

74.42.380 Director of nursing services. (1) The facility shall have a director of nursing services. The director of nursing services shall be a registered nurse.

(2) The director of nursing services is responsible for:

- (a) Coordinating the plan of care for each resident;
- (b) Permitting only licensed personnel to administer medications; and
- (c) Insuring that the licensed practical nurses comply with chapter 18.78 RCW and the registered nurses comply with chapter 18.88 RCW. [1979 1st ex.s. c 211 § 38.]

74.42.390 Communication system. The facility shall have a communication system, including telephone service, that insures prompt contact of on-duty personnel and prompt notification of responsible personnel in an emergency. [1979 1st ex.s. c 211 § 39.]

74.42.400 Engineering and maintenance personnel. The facility shall have sufficient trained and experienced personnel for necessary engineering and maintenance functions. [1979 1st ex.s. c 211 § 40.]

74.42.410 Laundry services. The facility shall manage laundry services to meet the residents' daily clothing and linen needs. The facility shall have available at all times enough linen for the proper care and comfort of the residents. [1979 1st ex.s. c 211 § 41.]

74.42.420 Resident record system. The facility shall maintain an organized record system containing a record for each resident. The record shall contain:

- (1) Identification information;
- (2) Admission information, including the resident's medical and social history;
- (3) A comprehensive plan of care and subsequent changes to the comprehensive plan of care;
- (4) Copies of initial and subsequent periodic examinations, assessments, evaluations, and progress notes made by the facility and the department;
- (5) Descriptions of all treatments, services, and medications provided for the resident since the resident's admission;
- (6) Information about all illnesses and injuries including information about the date, time, and action taken; and
- (7) A discharge summary.

Resident records shall be available to the staff members directly involved with the resident and to appropriate representatives of the department. The facility shall protect resident records against destruction, loss, and unauthorized use. The facility shall keep a resident's record after the resident is discharged as provided in RCW 18.51.300. [1979 1st ex.s. c 211 § 42.]

74.42.430 Written policy guidelines. The facility shall develop written guidelines governing:

- (1) All services provided by the facility;
- (2) Admission, transfer or discharge;
- (3) The use of chemical and physical restraints, the personnel authorized to administer restraints in an emergency, and procedures for monitoring and controlling the use of the restraints;
- (4) Procedures for receiving and responding to residents' complaints and recommendations;
- (5) Access to, duplication of, and dissemination of information from the resident's record;
- (6) Residents' rights, privileges, and duties;
- (7) Procedures if the resident is adjudicated incompetent or incapable of understanding his or her rights and responsibilities;
- (8) When to recommend initiation of guardianship proceedings to the department under chapter 11.88 RCW; and
- (9) Emergencies;
- (10) Procedures for isolation of residents with infectious diseases;
- (11) Procedures for residents to refuse treatment and for the facility to document informed refusal.

The written guidelines shall be made available to the staff, residents, members of residents' families, and the public. [1979 1st ex.s. c 211 § 43.]

74.42.440 Facility rated capacity not to be exceeded. The facility may only admit individuals when the facility's rated capacity will not be exceeded and when the facility has the capability to provide adequate treatment, therapy, and activities. [1979 1st ex.s. c 211 § 44.]

74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents. (1) The facility shall admit as residents only those individuals whose needs can be met by:

- (a) The facility;
- (b) The facility cooperating with community resources; or
- (c) The facility cooperating with other providers of care affiliated or under contract with the facility.

(2) The facility shall transfer a resident to a hospital or other appropriate facility when a change occurs in the resident's physical or mental condition that requires care or service that the facility cannot provide. The resident, the resident's guardian, if any, the resident's next of kin, the attending physician, and the department shall be consulted at least fifteen days before a transfer or discharge unless the resident is transferred under emergency circumstances. The department shall use casework services or other means to insure that adequate arrangements are made to meet the resident's needs.

(3) A resident shall be transferred or discharged only for medical reasons, the resident's welfare or request, the welfare of other residents, or nonpayment. A resident may not be discharged for nonpayment if the discharge would be prohibited by the medicaid program. [1979 1st ex.s. c 211 § 45.]

74.42.460 Organization plan and procedures. The facility shall have a written staff organization plan and detailed written procedures to meet potential emergencies and disasters. The facility shall clearly communicate and periodically review the plan and procedures with the staff and residents. The plan and procedures shall be posted at suitable locations throughout the facility. [1979 1st ex.s. c 211 § 46.]

74.42.470 Infected employees. No employee with symptoms of a communicable disease may work in a facility. The facility shall have written guidelines that will help enforce this section. [1979 1st ex.s. c 211 § 47.]

74.42.480 Living areas. The facility shall design and equip the resident living areas for the comfort and privacy of each resident. [1979 1st ex.s. c 211 § 48.]

74.42.490 Room requirements—Waiver. Each resident's room shall:

- (1) Be equipped with or conveniently located near toilet and bathing facilities;
- (2) Be at or above grade level;
- (3) Contain a suitable bed for each resident and other appropriate furniture;
- (4) Have closet space that provides security and privacy for clothing and personal belongings;
- (5) Contain no more than four beds;

- (6) Have adequate space for each resident; and
- (7) Be equipped with a device for calling the staff member on duty.

The department may waive the space and occupancy requirements of this section for an existing building constructed prior to January 1, 1980, for as long as the department considers appropriate if the department finds that the requirements would result in unreasonable hardship on the facility, the waiver serves the particular needs of the residents, and the waiver does not adversely affect the health and safety of the residents. [1979 1st ex.s. c 211 § 49.]

74.42.500 Toilet and bathing facilities. Toilet and bathing facilities shall be located in or near residents' rooms and shall be appropriate in number, size, and design to meet the needs of the residents. The facility shall provide an adequate supply of hot water at all times for resident use. Plumbing shall be equipped with control valves that automatically regulate the temperature of the hot water used by residents. [1979 1st ex.s. c 211 § 50.]

74.42.510 Room for dining, recreation, social activities—Waiver. The facility shall provide one or more areas not used for corridor traffic for dining, recreation, and social activities. A multipurpose room may be used if it is large enough to accommodate all of the activities without the activities interfering with each other: *Provided*, That the department may waive the provisions of this section for facilities constructed prior to January 1, 1980. [1979 1st ex.s. c 211 § 51.]

74.42.520 Therapy area. The facility's therapy area shall be large enough and designed to accommodate the necessary equipment, conduct an examination, and provide treatment: *Provided*, That developmentally disabled facilities shall not be subject to the provisions of this section if therapeutic services are obtained by contract with other facilities. [1979 1st ex.s. c 211 § 52.]

74.42.530 Isolation areas. The facility shall have isolation areas for residents with infectious diseases or make other provisions for isolating these residents. [1979 1st ex.s. c 211 § 53.]

74.42.540 Building requirements. (1) The facility shall be accessible to and usable by all residents, personnel, and the public, including individuals with disabilities: *Provided*, That no substantial structural changes shall be required in any facilities constructed prior to January 1, 1980.

(2) The facility shall meet the requirements of American National Standards Institute (ANSI) standard No. A117.1 (1961), or, if applicable, the requirements of chapter 70.92 RCW if the requirements are stricter than ANSI standard No. A117.1 (1961), unless the department waives the requirements of ANSI standard No. A117.1 (1961) under subsection (3) of this section.

(3) The department may waive, for as long as the department considers appropriate, provisions of ANSI standard No. A117.1 (1961) if:

(a) The construction plans for the facility or a part of the facility were approved by the department before March 18, 1974;

(b) The provisions would result in unreasonable hardship on the facility if strictly enforced; and

(c) The waiver does not adversely affect the health and safety of the residents. [1979 1st ex.s. c 211 § 54.]

74.42.550 Handrails. The facility shall have handrails that are firmly attached to the walls in all corridors used by residents: *Provided*, That the department may waive the provisions of this section in developmentally disabled facilities. [1979 1st ex.s. c 211 § 55.]

74.42.560 Emergency lighting for facilities housing developmentally disabled persons. If a living unit of a facility for the developmentally disabled houses more than fifteen residents, the living unit shall have emergency lighting with automatic switches for stairs and exits. [1979 1st ex.s. c 211 § 56.]

74.42.570 Health and safety requirements. The facility shall meet all federal, state, and local laws, rules, regulations, and codes pertaining to health and safety. [1979 1st ex.s. c 211 § 57.]

74.42.580 Penalties for violation of standards. The department may deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature pursuant to the provisions of chapter 34.04 RCW not to exceed one thousand dollars for such violations when the department finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee:

(1) Failed or refused to comply with the requirements of RCW 74.42.010 through 74.42.570 or the standards and rules established by the department under RCW 74.42.010 through 74.42.570;

(2) Was the holder of a license issued under chapter 18.51 RCW, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(3) Has knowingly or with reason to know made a false statement of a material fact in any records required under RCW 74.42.010 through 74.42.570;

(4) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained under RCW 74.42.010 through 74.42.570 or any portion of the premises of the facility;

(5) Wilfully prevented, interfered with, or attempted to impede in any way the work of any authorized representative of the department and the lawful enforcement of any provision of RCW 74.42.010 through 74.42.570; or

(6) Wilfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of RCW 74.42.010 through 74.42.570 or the standards and rules adopted pursuant to RCW 74.42.010 through 74.42.570. [1979 1st ex.s. c 211 § 58.]

74.42.590 Department to approve each resident's plan of care. (1) The department shall approve, within thirty days after each resident's admission to the facility, each resident's comprehensive plan of care.

(2) The department shall review the comprehensive plan of care for each resident at least annually thereafter.

(3) The facility shall submit any request to modify a resident's classification to the department for the department's approval. The approval shall not be given until the department has reviewed the resident. [1979 1st ex.s. c 211 § 59.]

74.42.600 Department inspections—Notice of noncompliance—Penalties. (1) In addition to the inspection required by chapter 18.51 RCW, the department shall inspect the facility for compliance with the standards in RCW 74.42.010 through 74.42.570.

(2) If the facility has not complied with any of the standards in RCW 74.42.010 through 74.42.570, the department shall notify the facility in writing that the facility is in noncompliance and describe the reasons for the facility's noncompliance. The notice shall inform the facility that, except for life-threatening situations which may be for a shorter period of time, the facility has three months from the date of notification to comply. The penalties in RCW 74.42.580 may be imposed if, upon inspection after the three-month period, the department determines that the facility has not complied. [1979 1st ex.s. c 211 § 60.]

74.42.610 Department to assess resident's needs. The department shall assess the needs of each resident within thirty days after the resident's admission. The department shall use the patient assessment system developed under RCW 18.51.310, as now or hereafter amended. Based upon the assessment of the resident's needs, the department shall assign each resident to a classification reflecting the level of care required by that resident. The classification system has at least five but not more than seven levels of care.

This section shall apply to developmentally disabled residents as a separate system. [1979 1st ex.s. c 211 § 61.]

74.42.620 Departmental rules. The department shall adopt rules pursuant to chapter 34.04 RCW necessary to carry out the policies and provisions of RCW 74.42.010 through 74.42.570. The department shall amend or repeal any rules that are in conflict with RCW 74.42.010 through 74.42.570. [1979 1st ex.s. c 211 § 62.]

74.42.900 Severability—1979 1st ex.s. c 211. If any provision of *this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 1st ex.s. c 211 § 69.]

*Reviser's note: "[T]his act" consists of chapter 74.42 RCW, RCW 18.51.091, amendments to RCW 18.51.070, 18.51.100, 18.51.110, and 18.51.310 and the repeal of RCW 18.51.090.

74.42.910 Construction—Conflict with federal requirements. If any part of *this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1979 1st ex.s. c 211 § 70.]

*Reviser's note: "[T]his act" see note following RCW 74.42.900.

74.42.920 Effective date—1979 1st ex.s. c 211. Except for *section 64 of this 1979 act, this 1979 act shall take effect on January 1, 1980. [1979 1st ex.s. c 211 § 72.]

*Reviser's note: Section 64 consists of amendments to RCW 18.51.070.

Chapter 74.98 CONSTRUCTION

Sections

74.98.010	Continuation of existing law.
74.98.020	Title, chapter, section headings not part of law.
74.98.030	Invalidity of part of title not to affect remainder.
74.98.040	Purpose—1959 c 26.
74.98.050	Repeals and saving.
74.98.060	Emergency—1959 c 26.

74.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 26 § 74.98.010.]

74.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 26 § 74.98.020.]

74.98.030 Invalidation of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, the application of the provision to other persons or circumstances is not affected. [1959 c 26 § 74.98.030.]

74.98.040 Purpose—1959 c 26. It is the purpose and intent of this title to provide for the public welfare by making available, in conjunction with federal matching funds, such public assistance as is necessary to insure to recipients thereof a reasonable subsistence compatible with decency and health. [1959 c 26 § 74.98.040.]

74.98.050 Repeals and saving. The following acts or parts of acts are repealed:

- (1) Sections 1 through 11, pages 395 through 397, Laws of 1854;
- (2) Section 19, page 422, Laws of 1854;
- (3) Sections 2680 and 2696 through 2706, Code of 1881;
- (4) Chapter 135, Laws of 1915;
- (5) Chapter 72, Laws of 1921;
- (6) Chapter 8, Laws of 1933;
- (7) Chapter 29, Laws of 1933;
- (8) Chapter 65, Laws of 1933;
- (9) Chapter 102, Laws of 1933;
- (10) Sections 2 through 7, chapter 172, Laws of 1933;
- (11) Chapter 77, Laws of 1935;
- (12) Chapter 106, Laws of 1935;
- (13) Chapter 110, Laws of 1935;
- (14) Chapter 118, Laws of 1935;
- (15) Sections 1 through 29, and 31, chapter 182, Laws of 1935;
- (16) Chapter 111, Laws of 1937;
- (17) Chapter 114, Laws of 1937;
- (18) Chapter 132, Laws of 1937;
- (19) Chapter 156, Laws of 1937;
- (20) Chapter 180, Laws of 1937;
- (21) Chapter 25, Laws of 1939;
- (22) Chapter 75, Laws of 1939;
- (23) Chapter 216, Laws of 1939;
- (24) Chapter 1, Laws of 1941;
- (25) Chapter 128, Laws of 1941;
- (26) Chapter 170, Laws of 1941;
- (27) Chapter 242, Laws of 1941;
- (28) Chapter 159, Laws of 1943;
- (29) Chapter 172, Laws of 1943;
- (30) Chapter 7, Laws of 1945;
- (31) Chapter 80, Laws of 1945;
- (32) Chapter 260, Laws of 1947;
- (33) Chapter 288, Laws of 1947;
- (34) Chapter 289, Laws of 1947;
- (35) Chapter 6, Laws of 1949;
- (36) Chapter 166, Laws of 1949;
- (37) Chapter 10, Laws of 1950, extraordinary session;
- (38) Chapter 1, Laws of 1951;
- (39) Chapter 122, Laws of 1951;
- (40) Chapter 165, Laws of 1951;
- (41) Chapter 176, Laws of 1951;
- (42) Chapter 261, Laws of 1951;
- (43) Sections 2 through 16, and 18, chapter 270, Laws of 1951;
- (44) Chapter 274, Laws of 1951;
- (45) Chapter 5, Laws of 1951, 1st extraordinary session;
- (46) Chapter 17, Laws of 1951, 2nd extraordinary session;
- (47) Chapter 21, Laws of 1951, 2nd extraordinary session;
- (48) Sections 3 through 51, chapter 174, Laws of 1953;
- (49) Chapter 3, Laws of 1953 1st extraordinary session;
- (50) Chapter 5, Laws of 1953 1st extraordinary session;
- (51) Chapter 273, Laws of 1955;
- (52) Chapter 366, Laws of 1955;

- (53) Chapter 379, Laws of 1955;
- (54) Chapter 380, Laws of 1955;
- (55) Sections 2 through 4, chapter 187, Laws of 1957;
- (56) Chapter 63, Laws of 1957.

Such repeals shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder, nor the term of office or appointment or employment of any person appointed or employed thereunder. [1959 c 26 § 74.98.050.]

74.98.060 Emergency—1959 c 26. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 26 § 74.98.060.]

Title 75

FOOD FISH AND SHELLFISH

Chapters

- 75.04 Definitions.
- 75.08 Administration and enforcement.
- 75.12 Taking of food fish, shellfish.
- 75.16 Conservation and propagation.
- 75.18 Preservation of salmon resources.
- 75.20 Restrictions as to dams, ditches, and other uses of waters and waterways.
- 75.24 Shellfish.
- 75.25 Razor clam digging.
- 75.28 Licenses.
- 75.30 Salmon charter boat licensing limitations.
- 75.32 Privilege fees and fish sales taxes.
- 75.36 Seizure and forfeiture of property for violations.
- 75.40 Compacts.
- 75.44 Loan assistance to commercial fishermen.
- 75.48 Salmon enhancement facilities bond issue.
- 75.98 Construction.

Halibut—Misbranding by failure to show proper name: RCW 69.04.315.

Hood Canal bridge, public sport fishing from: RCW 47.56.366.

Interagency committee for outdoor recreation, director member of: RCW 43.99.110.

Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.01.178.

Measurement of fish and fish products, fraud, penalty: RCW 9.45.122-9.45.126.

Thermal power plant site evaluation council, director a member: RCW 80.50.030.

Youth development and conservation committee, department's representative as member: RCW 43.51.520.

Chapter 75.04 DEFINITIONS

Sections

- 75.04.010 Scope of definitions.
- 75.04.020 "Director"——"Department"——"Person"
- 75.04.030 "Fish"——"Fishing".
- 75.04.040 "Food fish"——"Shellfish".
- 75.04.050 "Waters of the state".
- 75.04.060 "Offshore waters".
- 75.04.070 "Personal use".
- 75.04.080 "Commercial purposes".
- 75.04.090 "Resident".
- 75.04.100 "Angling".
- 75.04.110 "Salmon".

75.04.010 Scope of definitions. Terms used in this title or in any rule or regulation of the director of fisheries shall have the meaning given to them in this chapter unless the context clearly indicates otherwise. [1975 1st ex.s. c 152 § 2; 1955 c 12 § 75.04.010. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

Appointment, qualifications, powers, etc., of director of fisheries: Chapter 75.08 RCW.

Control of traffic along ocean beach highways for conservation of natural resources: RCW 43.51.680.

Loan assistance to commercial fishermen: Chapter 75.44 RCW.

Tidelands reserved for recreational use and taking of fish and shellfish: RCW 79.16.175, 79.16.176.

75.04.020 "Director"——"Department"——"Person". "Director" means the director of fisheries.

"Department" means the department of fisheries.

"Person" includes any individual, any corporation, any government agency, or any group of two or more individuals acting together to forward a common purpose. [1955 c 12 § 75.04.020. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

75.04.030 "Fish"——"Fishing". "Fish" and its derivatives, "fishing," "fished," etc., includes any means or effort made directly or indirectly to kill, injure, disturb, capture, or catch any of the various species of food fish and shellfish. [1955 c 12 § 75.04.030. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

75.04.040 "Food fish"——"Shellfish". "Food fish" and "shellfish" shall be construed to include any and all species of marine and fresh water life classified as such by statute or by the director. [1955 c 12 § 75.04.040. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

Frozen food fish or shellfish—Labeling requirements: RCW 69.04.930.

75.04.050 "Waters of the state". "Waters of the state" includes all waters within the territorial limits of the state. [1955 c 12 § 75.04.050. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

75.04.060 "Offshore waters". "Offshore waters" includes the waters of the Pacific Ocean and the straits, bays, inlets, coves, and estuaries thereof outside the territorial limits of the state. [1955 c 12 § 75.04.060. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

75.04.070 "Personal use". "Personal use"——The taking or possession of food fish or shellfish "for personal use" means taking or fishing for food fish and shellfish by angling or by such other means and with such gear as the director may authorize for fishing for personal use, or possessing the same for the use of the person fishing for, taking, or possessing the same and not for sale or barter. [1955 c 12 § 75.04.070. Prior:

1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

75.04.080 "Commercial purposes". "Commercial purposes"—The taking, fishing for, possession, processing, or otherwise dealing in or disposing of food fish and shellfish for "commercial purposes" means taking or fishing for food fish with any gear unlawful for fishing for personal use, or taking or possessing the food fish and shellfish in excess of the limits permitted for personal use, or taking, fishing for, handling, processing, or otherwise disposing of or dealing in food fish with the intent of disposing of such food fish, shellfish, or parts thereof for profit, or by sale, barter, trade, or in commercial channels. [1955 c 12 § 75.04.080. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

75.04.090 "Resident". A "resident" means a person who for the preceding one hundred and eighty days has maintained a permanent place of abode within the state with the intent to permanently reside within the state. [1955 c 12 § 75.04.090. Prior: 1951 c 271 § 1; 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

75.04.100 "Angling". "Angling" means fishing for personal use with one line attached to a pole held in hand while landing the fish, or with a hand operated line without rod or reel, to which may be attached not to exceed two single hooks, or one artificial bait with no more than four multiple hooks. [1955 c 12 § 75.04.100. Prior: 1949 c 112 § 1, part; Rem. Supp. § 5780-100, part.]

75.04.110 "Salmon". "Salmon" includes the sockeye, silver, chinook, chum, humpback salmon and the so called salmon trout, and each and every species of the genus *oncorhynchus*, commonly known as salmon. [1955 c 12 § 75.04.110. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780-100, part.]

Chapter 75.08

ADMINISTRATION AND ENFORCEMENT

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75.08.010 Fisheries code. This title shall be known and may be cited as the "fisheries code of the state of Washington." [1955 c 12 § 75.08.010. Prior: 1949 c 112 § 2; Rem. Supp. 1949 § 5780-200.]

75.08.012 Duties of the department. It shall be the duty and purpose of the department of fisheries to preserve, protect, perpetuate and manage the food fish and shellfish in the waters of the state and the offshore waters thereof to the end that such food fish and shellfish shall not be taken, possessed, sold or disposed of at such times and in such manner as will impair the supply thereof. For the purpose of conservation, and in a manner consistent therewith, the department shall seek to maintain the economic well-being and stability of the commercial fishing industry in the state of Washington. [1975 1st ex.s. c 183 § 1; 1949 c 112 § 3, part; Rem. Supp. 1949 § 5780-201, part. Formerly RCW 43.25.020. Redesignated as RCW 75.08.012 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.020.]

Reviser's note: For the effective date and expiration date of the amendment to this section by 1975 1st ex.s. c 183 § 1, see RCW 75.28.535.

Program to purchase fishing vessels, gear, licenses and permits: RCW 75.28.500-75.28.540.

75.08.014 Authority of director—Qualifications.

The director of fisheries shall have charge and general supervision of the department of fisheries, and shall exercise all the powers and perform all the duties prescribed by law with respect to food fish and shellfish.

No person shall be eligible to appointment as, or to hold the office of, director of fisheries, unless he has general knowledge of commercial fishing conditions and of the fishing industry in this state, and has no financial interest in the fishing industry or any industry directly connected therewith. [1953 c 207 § 10. Prior: (i) 1933 c 3 § 5; 1921 c 7 § 116; RRS § 10874. (ii) 1949 c 112 § 3, part; Rem. Supp. 1949 § 5780-201, part. (iii) 1949 c 112 § 5; Rem. Supp. 1949 § 5780-204. Formerly RCW 43.25.010. Redesignated as RCW 75.08.014 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.010.]

75.08.020 General duties of director—Patrol vehicles and crafts—Reports and recommendations. The director shall devote his time to the duties of his office and enforce the laws and regulations of the director relating to propagation, protection, conservation, preservation, and management of food fish and shellfish.

The director shall purchase, construct, charter, and operate vehicles, boats, and aircraft necessary to properly patrol the shores and waters of the state and the offshore waters in the enforcement of this title and the regulations of the director.

The director shall make an annual report each year to the governor, containing a statement of his official actions, of the operation and result of the laws pertaining to the fish and shellfish industry, statistics of the fishing business, and suggestions as to needed legislation whenever he deems it necessary. [1977 c 75 § 87; 1955 c 12 § 75.08.020. Prior: 1949 c 112 § 7(3), (6), (7); Rem. Supp. 1949 § 5780-206 (3), (6), (7).]

75.08.021 May administer oaths. The director, or those authorized by him, may administer oaths in any matter connected with the duties of his office, and may require any report, statement or application made or submitted to the department to be made under oath. [1949 c 112 § 9; Rem. Supp. 1949 § 5780-208. Formerly RCW 43.25.060. Redesignated as RCW 75.08.021 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.060.]

75.08.022 Director may employ assistants—Merit basis. The director shall have power to appoint, employ or deputize superintendents, inspectors, engineers, patrolmen and such clerical, technical, scientific and other assistants as may be necessary to carry on the work of the department. Such personnel, except the confidential secretary of the director, shall be employed on a basis of

merit and in accordance with the rules and regulations of the state personnel board as established in RCW 41-.06.030. [1949 c 112 § 4; Rem. Supp. 1949 § 5780-203. Formerly RCW 43.25.030. Redesignated as RCW 75-.08.022 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.030.]

75.08.024 Fisheries patrol officers—Relieved from active duty when injured—Compensation. The director shall, and he is hereby authorized to, relieve from active duty fisheries patrol officers who, while in the performance of their official duties, have been injured or may hereafter be injured to such an extent as to be incapable of active service. Such employees shall receive one-half of their compensation at the existing wage, during the time such disability continues in effect, less any compensation received through the provisions of RCW 41-.40.200, RCW 41.40.220 and RCW 75.08.206. [1957 c 216 § 1. Redesignated as RCW 75.08.024 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.048.]

75.08.025 Agreements with department of defense—Regulation, patrol of defense areas. The authority of the director under the provisions of this title shall extend to negotiating agreements with the department of defense of the United States, or representatives thereof, for the purpose of coordinating and correlating the control of fishing in the waters of the state over which the department of defense, for national defense purposes, has assumed control, to the end that such waters may be utilized for fishing consistent with the safety of fishermen, personnel of the department of defense, and the public; to promulgate and enforce regulations for restricted fishing in said areas and to provide for such patrol of said areas as may be necessary. [1955 c 12 § 75.08.025. Prior: 1953 c 207 § 11.]

75.08.027 Cooperation with Oregon for protection, propagation of aquatic products. In addition and supplemental to any other powers and duties as provided by law, the director of fisheries of the state of Washington is hereby authorized to cooperate with the fish and game commissions of the state of Oregon in the promulgation of rules and regulations to assure an annual yield of aquatic products on the Columbia river and to prevent the taking of these products at such places or at such times as might actually endanger the brood stock of such aquatic products. [1959 c 315 § 1.]

75.08.030 Installations and facilities—Establishment, maintenance. The director shall establish and maintain state fish hatcheries, rearing stations, cultural stations, eyeing stations, brood ponds, trap sites, buildings, dock and harbor facilities, food fish and shellfish sanctuaries, rights of way, and such other installations and facilities as in his judgment may be necessary for the exercise of the powers and discharge of the duties of the director and the department. [1955 c 12 § 75.08.030. Prior: 1949 c 112 § 7(1); Rem. Supp. 1949 § 5780-206(1).]

75.08.040 Lands, water rights, rights of way—Acquisition, use, and management. The director shall select and acquire by gift, easement, purchase, lease, or condemnation brought in the name of the state, and by any other lawful means at his disposal, such lands, water rights, and rights of way, and construct all necessary facilities thereon, as may be necessary for the exercise of the powers and discharge of the duties of the department.

The director shall have authority to sell, lease, convey, or grant concessions upon, any property, real or personal, heretofore or hereafter acquired for the state and under the control of the department. [1955 c 212 § 1; 1955 c 12 § 75.08.040. Prior: 1949 c 112 § 7(2); Rem. Supp. 1949 § 5780–206(2).]

Tidelands reserved for recreational use and taking of fish and shellfish: RCW 79.16.175, 79.16.176.

75.08.050 Oyster reserve—Conservation and development. The director shall examine all oyster reserves and do or cause to be done such things as may be deemed advisable to conserve, protect, and develop such reserves. [1955 c 12 § 75.08.050. Prior: 1949 c 112 § 7(4); Rem. Supp. 1949 § 5780–206(4).]

75.08.054 Oyster seed—Importation and inspection. The director shall have the power to promulgate regulations governing the importation of oyster seed for the purpose of planting in the waters of this state, and he shall have the duty and authority to require them to be inspected for disease, infestations and pests at such places and in such manner and at such times as he shall deem advisable in order to insure that the oysters in the waters of this state shall not be endangered by the importations of diseased or infested oysters or pests which prey on oysters, and it shall be unlawful for any person to import oysters in this state for the purpose of planting the same in the waters of this state or to plant oyster seed in the waters of this state without first having obtained the authority from the director to do so. The director shall give such authority only after an adequate inspection under his direction has been made and the seed in question has been found to be free of disease, infestation, pests and other substances which might endanger the oysters in the waters of this state. [1955 c 12 § 75.08.054. Prior: 1951 c 271 § 42.]

75.08.056 Oyster seed—Costs of inspection. Persons importing oyster seed under the provisions of RCW 75.08.054 shall pay for the actual costs of inspecting the same, excluding the inspector's base salary. The cost shall be determined by the director of fisheries and shall be prorated among the importers according to the number of cases of oyster seeds each imports. The director of fisheries shall have the authority and it shall be his duty to specify the time and manner of payment. [1967 ex.s. c 38 § 1; 1955 c 12 § 75.08.056. Prior: 1951 c 271 § 43.]

75.08.060 State shellfish and shrimp lands. The director shall examine the clam, mussel and oyster beds

located on lands belonging to the state, and with the approval of the state commissioner of public lands, withdraw such lands from sale and lease and make reserves or public beaches thereof. He shall take such steps as are advisable for the conservation, protection, and development of such reserves. He shall do whatever may be necessary for the protection and development of the oyster, shrimp, clam, and mussel beds on state lands or lands under the jurisdiction of the state. [1955 c 12 § 75.08.060. Prior: 1949 c 112 § 7(5); Rem. Supp. 1949 § 5780–206(5).]

75.08.070 Territorial authority of director—Regulations same as fisheries commissions. The authority of the director under the provisions of this title shall extend to all areas and waters within the territorial limits of the state and to the offshore waters; and the director is authorized under the provisions of this title to promulgate and publish regulations corresponding to the recommendations and regulations of the Pacific Marine Fisheries Commission, the International Fisheries Commission, and the International Pacific Salmon Fisheries Commission. [1955 c 12 § 75.08.070. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780–205, part.]

75.08.080 Rules and regulations—Scope. The director shall investigate the habits, supply and economic use of, and classify, the food fish and shellfish in the waters of the state and the offshore waters, and from time to time, make, adopt, amend, and promulgate rules and regulations as follows:

(1) Specifying the times when the taking of any or all the various classes of food fish and shellfish is lawful or prohibited.

(2) Specifying and defining the areas, places, and waters in which the taking and possession of the various classes of food fish and shellfish is lawful or prohibited.

(3) Specifying and defining the types and sizes of gear, appliances, or other means that may be lawfully used in taking the various classes of food fish and shellfish, and specifying the times, places, and manner in which it shall be lawful to possess or use the same.

(4) Regulating the possession, disposal, and sale of food fish and shellfish within the state, whether acquired within or without the state, and specifying the times when the possession, disposal, or sale of the various species of food fish or shellfish is prohibited.

(5) Regulating the prevention and suppression of all infectious, contagious, dangerous, and communicable diseases and pests affecting food fish and shellfish.

(6) The fixing of the size, sex, numbers, and amounts of the various classes of food fish and shellfish that may be taken, possessed, sold, or disposed of.

(7) Regulating the landing of the various classes of food fish and shellfish or parts thereof within the state.

(8) Regulating the destruction of predatory seals and sea lions and other predators destructive of food fish or shellfish, and specifying the proof of the destruction of the same that shall be required.

(9) Specifying the statistical and biological reports that shall be required from licensed or nonlicensed fishermen, dealers, boathouses, handlers, or processors of food fish and shellfish.

(10) Specifying which species of marine and freshwater life are food fish and shellfish.

(11) Classifying the species of food fish and shellfish or parts thereof that may be used for purposes other than human consumption.

(12) Promulgating such other rules and regulations as may be necessary to carry out the provisions of this title and the purposes and duties of the department.

Subdivisions (1), (2), (3), (4), (6), and (7), shall not apply to licensed oyster farms or oysters produced thereon. [1955 c 12 § 75.08.080. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780–205, part.]

75.08.085 Rules to promote orderly recreational fisheries. The director may adopt rules to promote orderly recreational fisheries and may take into consideration factors of navigation, law enforcement, recreational fishery enhancement, environmental concerns, and public recreation. The rules shall be adopted in conformity with chapter 34.04 RCW. [1977 ex.s. c 327 § 18.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.08.090 Rules and regulations—Adoption, promulgation. All rules and regulations of the director, acting director or such person designated by the director, and all amendments to, or modifications or revocations of existing rules and regulations shall be made and adopted by the director and shall be promulgated in accordance with the provisions of chapter 34.04 RCW. [1973 c 93 § 1; 1955 c 12 § 75.08.090. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780–205, part.]

75.08.100 Rules and regulations—As evidence. Rules and regulations of the director shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the director or assistant director certifying that the rule or regulation has been lawfully adopted, promulgated, and published, and the affidavit shall be prima facie evidence of proper adoption, promulgation, and publication of the rule or regulation. [1955 c 12 § 75.08.100. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780–205, part.]

75.08.110 Printing of laws, regulations—Approval required. No person shall print or cause to be printed a booklet or pamphlet of the fisheries laws or regulations of the director or portions thereof without the approval of the director. [1955 c 12 § 75.08.110. Prior: 1949 c 112 § 16; Rem. Supp. 1949 § 5780–215.]

75.08.120 Director may designate fishing areas. The director is authorized to designate the mouths and fishing limits of all rivers and streams, or other fishing areas by driving piling or by establishing monuments or by description of landmarks or section lines, and his designation shall be final. [1955 c 12 § 75.08.120. Prior: 1949 c 112 § 10; Rem. Supp. 1949 § 5780–209.]

75.08.130 Damaging of printed matter and signs prohibited. No person shall destroy, tear down, shoot at, deface, or erase any printed matter or signs placed or posted by or under the instructions of the director. [1955 c 12 § 75.08.130. Prior: 1949 c 112 § 15; Rem. Supp. 1949 § 5780–214.]

75.08.140 Brands on fish, etc., from private hatcheries and Indian reservations. The director shall have authority to require that brands, tags, or other devices be placed upon or attached to all food fish and shellfish sold from private hatcheries or Indian reservations, and to designate such brands, tags, or devices, and the director shall be authorized to charge a fee for such tags. [1955 c 12 § 75.08.140. Prior: 1949 c 112 § 8; Rem. Supp. 1949 § 5780–207.]

75.08.150 Enforcement of laws and regulations—Ex officio deputies. Every fisheries inspector, deputy fisheries inspector, game protector, sheriff, constable, marshal, and police officer within his respective jurisdiction, shall enforce all laws and all rules and regulations adopted by the director for the protection of food fish and shellfish, and the police officers specified, and United States game wardens, any forest officer appointed by the United States government, state forest wardens and rangers, and each of them, by virtue of their election or appointment, are constituted ex officio deputy fisheries inspectors within their respective jurisdictions. [1955 c 12 § 75.08.150. Prior: 1949 c 112 § 22; Rem. Supp. 1949 § 5780–220.]

75.08.160 Right of entry—Aircraft operated by department. The director and his duly authorized and acting assistants, fisheries inspectors, deputy fisheries inspectors, and department employees may, in the course of their duties, enter upon any land or waters in this state and remain thereon with any necessary equipment while performing such duties, and such action by such persons shall not constitute trespass.

It shall be lawful for any aircraft operated by the department to land and take off from any of the beaches or waters of the state and it shall be unlawful for any person to interfere with the operation of such aircraft. [1955 c 12 § 75.08.160. Prior: 1949 c 112 § 13; Rem. Supp. 1949 § 5780–212.]

75.08.170 Inspection and searches without warrant—Seizure of unlawful fish, shellfish. The director and any fisheries inspector or deputy inspector shall have the power to inspect and search without warrant, any person, boat, fishing appliance, cannery, and any property used in catching, packing, curing, preparing, or storing of food fish or shellfish, or any vehicle, conveyance, container, receptacle, cold storage plant, warehouse, market, tavern, restaurant, club, hotel, or other place, except any private domicile used exclusively as such, or any quarters in any boat, building or other property used exclusively as a private domicile, where he has reason to believe that food fish or shellfish are kept

for sale, barter, or other purpose, and which he has reason to believe contain evidence of violations of the fisheries code or of any rule, regulation, or order made by the director.

Any hindrance or interference with any such officer while engaged in making such search shall be prima facie evidence that the person interfering with or hindering such officer is guilty of a violation of this title.

Any of the officers above named may at any time seize and take possession of any food fish or shellfish which has been unlawfully caught, taken, or killed or which is unlawfully possessed in violation of the provisions of the fisheries code or of any order, rule, or regulation made by the director and the same shall be confiscated to the state. [1955 c 12 § 75.08.170. Prior: 1949 c 112 § 19; Rem. Supp. 1949 § 5780-218.]

75.08.180 Search warrants—When to be issued. Any court having jurisdiction, upon complaint showing probable cause for believing that any food fish or shellfish, or any parts thereof, caught, taken, killed, or had in possession or under control by any person, or shipped or transported contrary to law or rule or regulation of the director, are concealed or kept in any place, shall issue a search warrant and cause a search to be made in any such place for any food fish or shellfish or any parts thereof and may cause any place or container to be entered and searched. [1955 c 12 § 75.08.180. Prior: 1949 c 112 § 23; Rem. Supp. 1949 § 5780-221.]

75.08.190 Arrest without warrant—When authorized—Resisting officer. The director, and any fisheries inspector, or deputy fisheries inspector, shall have authority to arrest, without writ, order or process, any person in the act of violating any of the provisions of this title, or any of the rules, regulations, or orders made by the director, and they are hereby made peace officers. If any person knowingly or wilfully resists or opposes such officer in the discharge of his duties or aids and abets such resistance or opposition, he shall be guilty of a gross misdemeanor and shall be fined not less than two hundred and fifty dollars. [1955 c 12 § 75.08.190. Prior: 1949 c 112 § 20; Rem. Supp. 1949 § 5780-218a.]

75.08.200 Service, execution of warrants, processes—Assistance. The director, all fisheries inspectors, and all deputy fisheries inspectors may serve and execute all warrants and processes issued by the courts in enforcing the provisions of law and all rules and regulations of the director pertaining to food fish and shellfish.

For the purpose of enforcing any such law or rule or regulation, they may call to their aid any necessary equipment, boat, vehicle, or airplane, or any sheriff, deputy sheriff, game protector, constable, police officer, or citizen, and any such person shall render such aid. [1955 c 12 § 75.08.200. Prior: 1949 c 112 § 21; Rem. Supp. 1949 § 5780-219.]

75.08.203 Insurance against actions for false arrest. The director of fisheries, and all appointees and employees of the department of fisheries who have powers of

arrest shall, at the direction of the director of fisheries, be insured against actions for false arrest arising from arrests made while in the act of carrying out their assigned duties. The premiums on all such policies issued are to be paid from funds appropriated to the department of fisheries. [1953 c 207 § 13. Formerly RCW 43.25.045. Redesignated as RCW 75.08.203 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.045.]

75.08.206 Peace officer compensation insurance—Medical aid. The director of fisheries shall procure compensation insurance for all employees of the department of fisheries engaged as peace officers, insuring such employees against injury or death incurred in the course of their employment as such peace officers when such employment involves the performance of duties not covered under the workmen's compensation act of the state of Washington. The beneficiaries and the compensation and benefits under such insurance shall be the same as provided in chapter 51.32 RCW as amended by *this 1971 amendatory act, and said insurance also shall provide for medical aid and hospitalization to the extent and amount as provided in RCW 51.36.010 and 51.36.020 as now or hereafter amended. [1971 ex.s. c 289 § 73; 1953 c 207 § 14. Formerly RCW 43.25.047. Redesignated as RCW 75.08.206 and added to chapter 12, Laws of 1955 and Title 75 RCW by 1965 c 8 § 43.25.047.]

*Reviser's note: "this 1971 amendatory act", see note following RCW 51.08.018.

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

75.08.210 Failure to make reports and returns. It shall be unlawful for any person engaged in the fishing industry or licensed under this title to fail to make any report or return required of him by the fisheries code or by the director. [1955 c 12 § 75.08.210. Prior: 1949 c 112 § 18; Rem. Supp. 1949 § 5780-217.]

75.08.220 False information and reports. Every person who intentionally gives false or misleading information to the department as to the time, area, or waters in which any food fish or shellfish were taken or who shall intentionally prepare and submit a false or misleading report to the department shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred and fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not more than one year or by both such fine and imprisonment. [1955 c 12 § 75.08.220. Prior: 1949 c 112 § 14; Rem. Supp. 1949 § 5780-213.]

75.08.230 Disposition of moneys collected—Proceeds from sale of food fish or shellfish. All license fees, taxes, fines, and moneys realized from the sale of property seized or confiscated under the provisions of this title, and all bail moneys forfeited under prosecutions instituted under the provisions of this title, and all moneys realized from the sale of any of the property, real or personal, heretofore or hereafter acquired for the state

and under the control of the department, such moneys as are realized from the sale of food fish or shellfish caught or taken during test fishing operations conducted by the department for the purpose of food fish or shellfish resource evaluation studies, all moneys collected for damages and injuries to any such property, and all moneys collected for rental or concessions from such property, shall be paid into the state treasury general fund unless otherwise provided by law: *Provided*, That salmon taken in test fishing operations shall not be sold except during a season open to commercial fishing in the district wherein test fishing is being conducted: *Provided further*, That fifty percent of all money received as fines together with all of the costs shall be retained by the county in which the fine was collected.

All fines collected shall be remitted monthly by the justice of the peace or by the clerk of the court collecting the same to the county treasurer of the county in which the same shall be collected, and the county treasurer shall at least once a month remit fifty percent of the same to the state treasurer and at the same time shall furnish a statement to the director showing the amount of fines so remitted and from whom collected: *Provided*, That in instances wherein any portion of a fine assessed by a court is suspended, deferred, or otherwise not collected, the entire amount collected shall be remitted by the county treasurer to the state treasurer and shall be credited to the general fund: *Provided further*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds may exceed estimates thereof in the budget approved by the legislature, may be allocated by the office of financial management as unanticipated receipts under such procedures as are adopted by the legislature for the allocation of such receipts to reimburse the department for any unanticipated costs for test fishing operations in excess of any allowance therefor in the budget as approved by the legislature.

Proceeds of all sales of salmon and all sales of salmon eggs by the department, to the extent these proceeds may exceed estimates in the budget as approved by the legislature, may be allocated by the office of financial management as unanticipated receipts under such procedures as the legislature may adopt for the allocation of such receipts.

Such allocations shall be made only for the purpose of meeting department obligations in regards to hatchery operations partially or wholly financed by sources other than state general revenues or for purposes of processing human consumable salmon for disposal as may be provided by law. [1979 c 151 § 175; 1977 ex.s. c 327 § 33; 1975 1st ex.s. c 223 § 1; 1969 ex.s. c 199 § 31; 1969 ex.s. c 16 § 1; 1965 ex.s. c 72 § 2; 1955 c 12 § 75.08.230. Prior: 1951 c 271 § 2; 1949 c 112 § 25; Rem. Supp. 1949 § 5780-223.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.08.240 Payment of appropriations and claims—Remittances and statements by director. All appropriations for the department, and the fisheries division of the state treasurer and all claims against those departments, shall be paid from the general fund.

The director shall make weekly remittances to the state treasurer of all moneys collected by him from any source whatever, together with a statement showing from whence the moneys are derived. [1973 c 95 § 4; 1955 c 12 § 75.08.240. Prior: 1949 c 112 § 26; Rem. Supp. 1949 § 5780-224.]

75.08.250 Auditing of expenses—Preparing vouchers. All expenses incurred under the provisions of this title shall be audited by the state auditor, upon bills presented, properly certified by the director, or his duly authorized assistant and vouchers shall be prepared by the department and forwarded to the state treasurer for payment. [1973 c 106 § 34; 1955 c 12 § 75.08.250. Prior: 1949 c 112 § 27; Rem. Supp. 1949 § 5780-225.]

75.08.260 General penalty for violations—Penalties for gross violation of salmon laws. Unless otherwise provided for in the fisheries code any person who violates any of the provisions of the fisheries code, or any of the rules or regulations of the director made pursuant thereto, or who aids or abets or assists in the violation thereof, shall be guilty of a gross misdemeanor, and upon a conviction thereof shall be punished by imprisonment in the county jail of the county in which the offense is committed for not less than thirty days or more than one year, or by a fine of not less than twenty-five dollars or more than one thousand dollars, or by both such fine and imprisonment.

Any person taking or possessing salmon in violation of any of the provisions of the fisheries code, or any of the rules or regulations of the director made pursuant thereto, shall, in the event such salmon have a market value greater than two hundred and fifty dollars, be punished by a fine in an amount not more than five thousand dollars. Such fine shall be in addition to any other punishment prescribed for such conduct and shall be imposed along with such punishment in the same proceedings. In addition, the food fish involved in the violation shall be forfeited to the state. [1979 1st ex.s. c 99 § 1; 1955 c 12 § 75.08.260. Prior: 1949 c 112 § 75; Rem. Supp. 1949 § 5780-601.]

75.08.270 Justice and superior courts have concurrent jurisdiction. Every justice of the peace shall have jurisdiction concurrent with the superior court of all misdemeanors and gross misdemeanors committed in violation of the fisheries code and of the rules, regulations, and orders made by the director in accordance with existing law and to impose any penalty or confiscation provided for such offenses. [1955 c 12 § 75.08.270. Prior: 1949 c 112 § 78; Rem. Supp. 1949 § 5780-604.]

75.08.275 Duty of attorney general when prosecuting attorney defaults. If any person violates any of the provisions of the fisheries law or any regulation of the director, and the prosecuting attorney of the county

wherein such violation occurs shall, after information has been given him by the director, fail within thirty days thereafter to file an information against such alleged violator, the attorney general, when requested by the director, may file an information in the superior court of such county in the place and stead of the prosecuting attorney and prosecute the case. [1949 c 112 § 24; Rem. Supp. 1949 § 5780-222. Formerly RCW 43.25.070. Redesignated as RCW 75.08.275 and added to chapter 12, Laws of 1955 and to Title 75 RCW by 1965 c 8 § 43.25.070.]

75.08.280 Venue as to violations occurring in offshore waters. Violations of the fisheries code or the regulations of the director occurring in the offshore waters may be prosecuted in the superior court or justice courts of any county bordering on the Pacific Ocean, or in any county in which the food fish or shellfish are landed. [1955 c 12 § 75.08.280. Prior: 1949 c 112 § 79; Rem. Supp. 1949 § 5780-605.]

75.08.290 Retaliatory license application provision. If pursuant to the laws of any other state or territory application for any license relating to food fish or shellfish, commercial or personal, is required by such state or territory to be made in person by the person seeking to be licensed, a like requirement shall be imposed upon any person from such other state or territory who makes application for any license under the provisions of this title. [1961 c 230 § 1.]

Chapter 75.12

TAKING OF FOOD FISH, SHELLFISH

Sections

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75.12.650	"Angling" or "personal use" gear prohibited for commercial salmon fishing.

Columbia river boundary compact: Chapter 43.58 RCW.

75.12.010 Commercial fishing for salmon in certain waters unlawful—Odd years. It shall be unlawful to fish for, catch, or take any species of salmon for commercial purposes, except as hereinafter provided, within the waters of the Straits of Juan de Fuca, Puget Sound and waters connected therewith within the state of Washington described as lying to the southerly, easterly and southeasterly of a line described as follows:

Commencing at a concrete monument on Angeles Point in Clallam county, state of Washington, near the mouth of the Elwha River on which is inscribed "Angeles Point Monument" in the latitude 48° 9'3" [north, longitude 123° 33'01" west of Greenwich Meridian; thence running east on a line 81°] 30' true from said point across the flashlight and bell buoy off Partridge Point and thence continued to where said line intersects longitude 122° 40' west; thence north on said line to where said line intersects the southerly shore of Sinclair Island at high tide; thence along the southerly shore of said island to the most easterly point thereof; thence north 46° east true to the line of high tide at Carter Point, the most southerly point of Lummi Island; thence northwesterly along the westerly shore line at high tide of said Lummi Island to where said shore line at high tide intersects line of longitude 122° 40' west; thence north on said line to where said line intersects the mainland at the line of high tide; including within said area the southerly portion of Hale Passage, Bellingham Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, Similk Bay, Saratoga Passage, Holmes Harbor, Possession Sound, Admiralty Inlet, Hood Canal, Puget Sound, and all inlets, passages, waters, waterways, and the tributaries thereof: *Provided*, That, subject to such seasons and regulations as may be established from time to time by the director, it shall be lawful to fish for commercial purposes within the above described waters with any lawful gear for sockeye salmon during the period extending from the tenth day of June to the twenty-fifth day of the following July and for other legal salmon from the second Monday of September to and including

the thirtieth day of the following November, except during the hours beginning 4:00 o'clock p.m. of Friday and ending at 4:00 o'clock p.m. of the Sunday following: *And provided*, That it shall be lawful to fish for salmon for commercial purposes with gill net gear subject to such regulations and to such shorter seasons as the director may establish from time to time prior to the second Monday in September within the waters of Hale Passage, Bellingham Bay, Samish Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, and Similk Bay, to wit: Those waters northerly and easterly of a line commencing at Stanwood, thence along the south shore of Skagit Bay to Rocky Point on Camano Island; thence northerly to Polnell Point on Whidbey Island.

And provided, That whenever the director determines that a stock or run of salmon cannot be feasibly and properly harvested in the usual manner, and that such stock or run of salmon may be in danger of being wasted and surplus to natural or artificial spawning requirements, the director may maneuver units of lawful gill net and purse seine gear in any number or equivalents at his discretion, by time and area, to fully utilize such harvestable portions of these salmon runs for the economic well being of the citizens of this state, except that gill net and purse seine gear other than emergency and test gear authorized by the fisheries department shall not be used in Lake Washington.

And provided, That subject to such regulations and to such shorter seasons as the director may establish from time to time, it shall be lawful to fish for pink salmon for commercial purposes with any lawful gear in each odd year during the period running from the first day of August to the first day of September, both dates inclusive, in the waters lying inside of the following described line: A line commencing at a red wooden monument located on the most easterly point of Dungeness Spit and thence projected to a similar monument located at Point Partridge on Whidbey Island and a line commencing at a red wooden monument located on Olele Point and thence projected easterly to a similar monument located at Bush Point on Whidbey Island. [1973 1st ex.s. c 220 § 2; 1971 ex.s. c 283 § 13; 1955 c 12 § 75.12.010. Prior: 1949 c 112 § 28; Rem. Supp. 1949 § 5780-301.]

Legislative declaration: "The preservation of the fishing industry and food fish and shellfish resources of the state of Washington is vital to the state's economy, and effective measures and remedies are necessary to prevent the depletion of these resources." [1973 1st ex.s. c 220 § 1.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.12.020 Taking or molesting fish at or near racks, dams. It shall be unlawful to catch, kill, or in any manner menace, maim or destroy, any food fish at any rack, dam or other obstruction or in the waters and on the beaches within one mile below any rack, dam or other obstruction when the same are within the territorial limits of the state of Washington or in waters of the Columbia River over which this state has concurrent jurisdiction, unless otherwise specified in the orders of the director. [1955 c 12 § 75.12.020. Prior: 1949 c 112 § 37; Rem. Supp. 1949 § 5780-311.]

75.12.030 Fishing in fishways, etc., prohibited. See RCW 75.20.070.

75.12.040 Gill nets in Columbia River—Maximum length permitted. It shall be unlawful to construct, install, use, operate, or maintain gill nets which shall exceed 250 fathoms in length in the waters of the Columbia River in this state for the purpose of catching salmon. [1955 c 12 § 75.12.040. Prior: 1949 c 112 § 29; Rem. Supp. 1949 § 5780-303.]

75.12.050 Drag seines unlawful in Columbia River. It shall be unlawful to construct, install, use, operate, or maintain any drag seine in the waters of the Columbia River in the state for the purpose of taking salmon, and it shall be unlawful to take salmon with such gear. [1955 c 12 § 75.12.050. Prior: 1949 c 112 § 30; Rem. Supp. 1949 § 5780-304.]

75.12.060 Fixed appliances for catching salmon unlawful. It shall be unlawful to construct, install, use, operate, or maintain within any waters of the state any pound net, round haul net, lampara net, fish trap, fish wheel, scow fish wheel, set net, weir, or any fixed appliance for the purpose of catching salmon, and it shall be unlawful to take salmon by any such means. [1955 c 12 § 75.12.060. Prior: 1951 c 271 § 3; 1949 c 112 § 31; Rem. Supp. 1949 § 5780-305.]

75.12.070 Shooting, gaffing, etc., food or shellfish. Unless otherwise provided for in the regulations of the director, it shall be unlawful to shoot, gaff, snag, snare, spear, stone, or otherwise molest any food fish or shellfish in any of the waters of the state. [1955 c 12 § 75.12.070. Prior: 1949 c 112 § 38; Rem. Supp. 1949 § 5780-312.]

75.12.080 Discharge of explosives in water unlawful. It shall be unlawful to use or discharge, in any of the waters of this state, any explosive substance of any kind, character or description except under permit of the director. Where explosives are discharged for the purpose of unlawfully taking or destroying food fish or shellfish the person so offending shall be fined not less than two hundred and fifty dollars. [1955 c 12 § 75.12.080. Prior: 1951 c 271 § 4; 1949 c 112 § 32; Rem. Supp. 1949 § 5780-306.]

75.12.090 Taking caught fish or stealing gear—Penalty. It shall be unlawful to take from any building, vehicle, scow, live box, container, trap, seine, line or net, any caught or impounded fish or shellfish with the intent of depriving the rightful owner of such food fish or shellfish and it shall be unlawful to wilfully steal or otherwise molest any of the fishing or shellfishing gear operated under a license from the state. Any person violating this section shall be guilty of a gross misdemeanor and shall be subject to a fine of not less than two hundred and fifty dollars. [1955 c 12 § 75.12.090. Prior: 1949 c 112 § 33; Rem. Supp. 1949 § 5780-307.]

75.12.100 Purchase, etc., of food or shellfish taken unlawfully. It shall be unlawful for any person to purchase, handle, deal in, sell, or have in his possession any food fish or shellfish which were taken from any of the waters of this state contrary to the provisions of the fisheries code or the regulations of the director. [1955 c 12 § 75.12.100. Prior: 1949 c 112 § 34; Rem. Supp. 1949 § 5780–308.]

75.12.110 Taking, etc., food or shellfish not to be used for human consumption unlawful. It shall be unlawful to take or fish for or have in possession any food fish or shellfish of any kind, character, or description, or parts thereof, unless the same are to be used for human consumption or bait: *Provided*, That the director shall have the power from time to time to make, adopt, amend, and promulgate in the manner provided by law, rules and regulations permitting the taking, possession, sale, or use of any species of food fish or shellfish or parts thereof for uses other than human consumption and bait. [1955 c 12 § 75.12.110. Prior: 1949 c 112 § 35; Rem. Supp. 1949 § 5780–309.]

75.12.115 Taking or fishing for crawfish unlawful—Exceptions. It shall be unlawful to take or fish for crawfish for commercial purposes in any of the rivers, streams or lakes of the state except under conditions where crawfish have been cultured for commercial purposes or where otherwise permitted under department of fisheries rules or regulation. [1971 ex.s. c 106 § 1.]

75.12.120 Waste of food or shellfish unlawful—Purchase for canning, etc. It shall be unlawful for any person to wantonly waste or destroy food fish or shellfish taken or caught in any of the waters of the state, or the offshore waters, and no person engaged in the canning, preserving, or curing of food fish and shellfish shall purchase or engage a greater quantity than he is able to can, preserve, or cure within sixty hours after the same are taken from the water, unless such food fish or shellfish have been kept artificially chilled and in good marketable condition. [1955 c 12 § 75.12.120. Prior: 1949 c 112 § 36; Rem. Supp. 1949 § 5780–310.]

75.12.130 Director authorized to take fish or shellfish—Sale—Restrictions as to salmon. The director may, for the purpose of carrying out his duties, take or remove or cause to be taken or removed in any manner, at any time, any fish or shellfish of any kind, character, or description from any waters or beaches of the state.

The director is authorized to sell food fish or shellfish caught or taken during test fishing operations conducted by the department for the purpose of food fish or shellfish resource evaluation studies.

The director is prohibited from selling spawned-out salmon carcasses or salmon in spawning condition for human consumption: *Provided*, That such salmon and carcasses may be given to state institutions or schools or to economically depressed people, unless such salmon are found to be unfit for human consumption by the department of social and health services. That which is not fit for human consumption may be sold by the director for

animal food, fish food, or for industrial purposes. [1979 c 141 § 382; 1969 ex.s. c 16 § 2; 1965 ex.s. c 72 § 1; 1955 c 12 § 75.12.130. Prior: 1949 c 112 § 41; Rem. Supp. 1949 § 5780–315.]

Disposition of moneys taken from sale of food fish or shellfish taken in test fishing, salmon: RCW 75.08.230.

75.12.140 Reef net fishing areas—Created. The following reef net fishing areas are hereby created: *Provided*, That nothing in this section and RCW 75.12.150 and 75.12.160 shall be interpreted as prohibiting other types of legal gear from fishing within the areas created:

(1) Point Roberts reef net fishing area includes those waters within 250 feet on each side of a line projected 129° true from a point at longitude 123° 01' 15" W. latitude 48° 58' 38" N. to a point one mile distant, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6300, published September, 1941, in Washington, D.C., eleventh edition.

(2) Cherry Point reef net fishing area includes those waters inland and inside the 10-fathom line between lines projected 205° true from points on the mainland at longitude 122° 44' 54" latitude 48° 51' 48" and longitude 122° 44' 18" latitude 48° 51' 33", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(3) Lummi Island reef net fishing area includes those waters inland and inside a line projected from Village Point 208° true to a point 900 yards distant, thence 129° true to the point of intersection with a line projected 259° true from the shore of Lummi Island 122° 40' 42" latitude 48° 41' 32", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition, revised 11–25–57, save and except that there shall be excluded therefrom all waters lying inside of a line projected 259° true from a point at 122° 40' 42" latitude 48° 41' 32" to a point 300 yards distant from high tide, thence in a northerly direction to the United States Coast and Geodetic Survey reference mark number 2, 1941–1950, located on that point on Lummi Island known as Lovers Point, as such descriptions are shown upon the United States Coast and Geodetic Survey map number 6380 as aforesaid. The term "Village Point" as used herein shall be construed to mean a point of location on Village Point, Lummi Island, at the mean high tide line on a true bearing of 43° 53' a distance of 457 feet to the center of the chimney of a wood frame house on the east side of the county road. Said chimney and house being described as Village Point Chimney on page 612 of the United States Coast and Geodetic Survey list of geographic positions No. G–5455, Rosario Strait.

(4) Sinclair Island reef net fishing area includes those waters inland and inside a line projected from the northern point of Sinclair Island to Boulder reef, thence 200° true to the northwesterly point of Sinclair Island, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(5) Flat Point reef net fishing area includes those waters within a radius of 175 feet of a point off Lopez Island located at longitude 122° 55' 24" latitude 48° 32' 33", as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(6) Lopez Island reef net fishing area includes those waters within 400 yards of shore between lines projected true west from points on the shore of Lopez Island at longitude 122° 55' 04" latitude 48° 31' 59" and longitude 122° 55' 54" latitude 48° 30' 55", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(7) Iceberg Point reef net fishing area includes those waters inland and inside a line projected from Davis Point on Lopez Island to the west point of Long Island, thence to the southern point of Hall Island, thence to the eastern point at the entrance to Jones Bay, and thence to the southern point at the entrance to Mackaye Harbor on Lopez Island; and those waters inland and inside a line projected 320° from Iceberg Point light on Lopez Island, a distance of 400 feet, thence easterly to the point on Lopez Island at longitude 122° 53' 00" latitude 48° 25' 39", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(8) Aleck Bay reef net fishing area includes those waters inland and inside a line projected from the southwestern point at the entrance to Aleck Bay on Lopez Island at longitude 122° 51' 11" latitude 48° 25' 14" southeasterly 800 yards to the submerged rock shown on U.S.G.S. map number 6380, thence northerly to the cove on Lopez Island at longitude 122° 50' 49" latitude 48° 25' 42", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(9) Shaw Island reef net fishing area number 1 includes those waters within 300 yards of shore between lines projected true south from points on Shaw Island at longitude 122° 56' 14" latitude 48° 33' 28" and longitude 122° 57' 29" latitude 48° 32' 58", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(10) Shaw Island reef net fishing area number 2 includes those waters inland and inside a line projected from Point George on Shaw Island to the westerly point of Neck Point on Shaw Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(11) Stuart Island reef net fishing area number 1 includes those waters within 600 feet of the shore of Stuart Island between lines projected true east from points at longitude 123° 10' 47" latitude 48° 39' 47" and longitude 123° 10' 47" latitude 48° 39' 33", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(12) Stuart Island reef net fishing area number 2 includes those waters within 250 feet of Gossip Island, also known as Happy Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(13) Johns Island reef net fishing area includes those waters inland and inside a line projected from the eastern point of Johns Island to the northwestern point of Little Cactus Island, thence northwesterly to a point on Johns Island at longitude 123° 09' 24" latitude 48° 39' 59", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(14) Battleship Island reef net fishing area includes those waters lying within 350 feet of Battleship Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(15) Open Bay reef net fishing area includes those waters lying within 150 feet of shore between lines projected true east from a point on Henry Island at longitude 123° 11' 34 1/2" latitude 48° 35' 27 1/2" at a point 250 feet south, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(16) Mitchell Reef net fishing area includes those waters within a line beginning at the rock shown on U.S.G.S. map number 6380 at longitude 123° 10' 56" latitude 48° 34' 49 1/2", and projected 50 feet northwesterly, thence southwesterly 250 feet, thence southeasterly 300 feet, thence northeasterly 250 feet, thence to the point of beginning, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(17) Smugglers Cove reef fishing area includes those waters within 200 feet of shore between lines projected true west from points on the shore of San Juan Island at longitude 123° 10' 29" latitude 48° 33' 50" and longitude 123° 10' 31" latitude 48° 33' 45", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(18) Andrews Bay reef net fishing area includes those waters lying within 300 feet of the shore of San Juan Island between a line projected true south from a point at the northern entrance of Andrews Bay at longitude 123° 09' 53 1/2" latitude 48° 33' 00" and the cable crossing sign in Andrews Bay, at longitude 123° 09' 45" latitude 48° 33' 04", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(19) Orcas Island reef net fishing area includes those waters inland and inside a line projected true west a distance of 1,000 yards from the shore of Orcas Island at longitude 122° 57' 40" latitude 48° 41' 06" thence northeasterly to a point 500 feet true west of Point

Doughty, then true east to Point Doughty, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition. [1965 c 64 § 1; 1961 c 236 § 1; 1959 c 309 § 1; 1955 c 276 § 2.]

75.12.150 Reef net fishing areas—Distances between rows of reef net gear. The director may by appropriate regulations specify the distances to be maintained between rows of reef net gears. [1955 c 276 § 3.]

75.12.160 Reef net fishing areas—Commercial salmon fishing with reef nets unlawful elsewhere. It shall be unlawful to fish for salmon for commercial purpose with reef net fishing gear in any waters of the state of Washington except in those waters within the reef net areas described in this chapter. [1955 c 276 § 4.]

75.12.200 Conservation of salmon resources in Pacific Ocean—Preamble. The state has a vital interest in the salmon resources of the Pacific Ocean both within and beyond the territorial limits of the state, in that a large number of such salmon spawn in its fresh water streams, migrate to the waters of the Pacific Ocean and, in response to their anadromous cycle, return to the fresh water streams to spawn.

Expansion of fishing for salmon by the use of nets in waters of the eastern Pacific Ocean, which has occurred in the past year, will result in a substantial depletion of salmon originating within the state because the salmon runs are intercepted before they separate to move in toward the rivers of their origin. Oregon, California and Canada, through their respective fisheries agencies, have likewise expressed a deep concern over this problem since portions of such salmon originate within their respective jurisdictions. Short of absolute prohibition, it appears to be presently impracticable to regulate salmon net fishing in such waters of the Pacific Ocean by any known scientific fisheries management techniques in order to insure adequate salmon escapement to the three Pacific Coast states and Canada, the reason being that salmon stocks and races are so commingled in such Pacific Ocean waters that they are indistinguishable as to origin until they enter the harbors, bays, straits and estuaries of the respective jurisdictions.

Canada, through its authorized officials, has proposed to prohibit its nationals from net fishing for salmon in Pacific Ocean waters provided the United States or the three Pacific Coast states apply such appropriate conservation measures to their respective citizens. Inasmuch as there is presently no congressional legislation prohibiting such fishing, and inasmuch as authorized officials of the state department of the United States have expressed a desire to have the states act in this area, the Pacific Marine Fisheries Commission has proposed and recommended appropriate legislation to the three Pacific Coast states to insure the survival of their valuable salmon resources. [1957 c 108 § 2.]

*Pacific Marine Fisheries Commission: RCW 75.40.030 (Article III).
Preservation of salmon resources: Chapter 75.18 RCW.*

75.12.210 Conservation of salmon resources in Pacific Ocean—Net fishing for salmon in certain Pacific Ocean waters unlawful. It shall be unlawful for any person to fish for or take, by the use of any type of net, any salmon within the waters of the Pacific Ocean, over which the state has jurisdiction, lying westerly of the following described line: Commencing at the point of intersection of the international boundary line in the Strait of Juan de Fuca and a line drawn between the lighthouse on Tatoosh Island in Clallam County, Washington, and Bonilla Point on Vancouver Island; thence southerly along a line projected therefrom to the lighthouse on Tatoosh Island; thence southerly along a line projected therefrom to the most westerly point of Cape Flattery; thence southerly along the state shoreline of the Pacific Ocean, crossing any river mouths at their most westerly points of land, to Point Brown at the entrance to Grays Harbor; thence southerly along a line projected therefrom to Point Chehalis Light on Point Chehalis; thence southerly from Point Chehalis along the state shoreline of the Pacific Ocean to Cape Shoalwater Light at the entrance to Willapa Bay; thence southerly along a line projected therefrom to Leadbetter Point; thence southerly along the state shoreline of the Pacific Ocean to the inshore end of the North jetty at the entrance to the Columbia River; thence southerly along a line projected therefrom to the knuckle of the South jetty at the entrance to said river. [1957 c 108 § 3.]

Restrictions on fishing in certain districts: Chapter 75.18 RCW.

75.12.220 Conservation of salmon resources in Pacific Ocean—Net fishing within international waters of Pacific Ocean unlawful—Unlawful to use other than troll or angling gear if sister states concur. It shall be unlawful for any citizen of this state to fish for or take, by the use of any type of net, any salmon within the international waters of the Pacific Ocean: *Provided*, That it shall be unlawful for any citizen of this state to fish for or take, by the use of gear other than troll gear or angling gear, any salmon within the international waters of the Pacific Ocean if California, Alaska, and Oregon pass laws or regulations prohibiting fishing by their respective citizens in the international waters of the Pacific Ocean with any gear other than troll gear or angling gear within one year from the *date of passage of this act. Such laws or regulations shall be considered to be in effect upon receipt by the secretary of state of this state a certificate from each of the respective secretaries of state of Oregon, California, and Alaska setting forth copies of such laws or regulations and the date of their enactment. In any prosecution under this section, proof of the existence of such laws or regulations shall be made by filing copies of such certificates, certified by the director to be true copies, with the court. In any such prosecution, if written demand for proof of the existence of such laws or regulations is not made by the defendant prior to commencement of trial, he shall be deemed to have waived his right to make such demand, and thereafter such laws or regulations shall be presumed to exist. [1963 c 234 § 1; 1957 c 108 § 4.]

*Reviser's note: "date of passage of this act", chapter 234, Laws of 1963 was HB No. 404 which passed the house, March 13, 1963; passed the senate March 12, 1963; and was approved by the governor March 26, 1963. The effective date of acts passed that session without special effective dates was June 13, 1963.

75.12.230 Conservation of salmon resources in Pacific Ocean—Possession, transportation of salmon taken by net unlawful—Same, taken by other than troll or angling gear or on board vessel carrying unlawful gear—Exceptions. It shall be unlawful for any person to transport through the waters of the state wherein salmon net fishing is prohibited, or to have in his possession anywhere within the state, any salmon which were taken by any type of net within the international waters of the Pacific Ocean or within the territorial waters of this state or of another state, territory or country where such fishing is unlawful: It shall further be unlawful for any person, within the territorial waters of the Pacific Ocean where salmon net fishing is prohibited, to possess any salmon on board any vessel carrying a net of a type named in chapter 75.28 RCW, unless accompanied by a certificate issued under the authority of this state or of another state, territory, or country showing that such salmon have been lawfully taken therein: *Provided*, That it shall be unlawful for any person to transport through the waters of the state wherein salmon fishing by the use of any type of fishing gear other than troll lines or angling gear is prohibited, or to have in his possession anywhere within the state, any salmon which were taken by any type of fishing gear other than troll lines or angling gear within the international waters of the Pacific Ocean or within the territorial waters of this state or of another state or country where such fishing is unlawful: It shall further be unlawful for any person, within the territorial waters of the Pacific Ocean where salmon fishing by any type of fishing gear other than troll lines or angling gear is prohibited, to possess any salmon on board any vessel carrying any fishing gear of a type other than troll lines or angling gear, unless accompanied by a certificate issued under authority of this state or of another state, territory, or country showing that such salmon have been lawfully taken therein if California, Alaska and Oregon pass laws or regulations similarly prohibiting possession and transportation within their respective states within one year from the *date of passage of this act. Such laws or regulations shall be considered to be in effect upon receipt by the secretary of state of this state a certificate from each of the respective secretaries of state of Oregon, California and Alaska setting forth copies of such laws or regulations and the date of their enactment. In any prosecution under this section, proof of the existence of such laws or regulations shall be made by filing copies of such certificates, certified by the director to be true copies, with the court. In any such prosecution, if written demand for proof of the existence of such laws or regulations is not made by the defendant prior to commencement of trial, he shall be deemed to have waived his right to make such demand, and thereafter such laws or regulations shall be presumed to exist. [1963 c 234 § 2; 1957 c 108 § 5.]

*Reviser's note: See note following RCW 75.12.220.

Possession, transportation of salmon through fishing district: Chapter 75.18 RCW.

75.12.232 Conservation of salmon resources in Pacific Ocean—Director may permit licensees to use gear similar to that used by foreign vessels. If upon investigation by the director of the department of fisheries it is found that vessels of foreign nations are fishing in the international waters of the Pacific Ocean contrary to the provisions of chapter 75.12 RCW, the director may by special permit authorize the citizens of this state who possess commercial salmon licenses to fish for, take and possess salmon with gear similar to that operated by the vessels of the foreign nations so fishing: *Provided*, That the director shall not issue any such permits if the vessels of foreign nations are fishing for salmon in international waters of the Pacific Ocean in conformity with treaty agreements with the United States. [1963 c 234 § 3.]

75.12.240 Conservation of salmon resources in Pacific Ocean—"International waters" defined. "International waters" means waters outside the territorial boundaries of any state, territory, or country. [1957 c 108 § 6.]

75.12.250 Conservation of salmon resources in Pacific Ocean—"Citizen of this state" defined. A "citizen of this state" means a person who maintains his usual place of abode within the state or who otherwise qualifies as a citizen of the state under the applicable laws of the state. [1957 c 108 § 7.]

75.12.260 Conservation of salmon resources in Pacific Ocean—When RCW 75.12.200 through 75.12.270 inoperative, when effective, how existence proved. RCW 75.12.200 through 75.12.270 shall become inoperative one year from March 18, 1957 unless laws or regulations are in effect in Canada, Oregon and California which, in substance or effect are similar either to RCW 75.12.210 or 75.12.220 or to one of the two provisions of RCW 75.12.230, exclusive of boundary line descriptions, or which otherwise effectuate the purposes of RCW 75.12.200 through 75.12.270. Such laws or regulations shall be considered to be in effect upon receipt by the secretary of state of this state of a certificate from each of the respective secretaries of state of Oregon and California, and, on behalf of Canada, from the Department of State of the United States setting forth copies of such laws or regulations and the date of their enactment. In any prosecution under RCW 75.12.200 through 75.12.270, proof of the existence of such laws or regulations may be made by filing copies of such certificates, certified by the director to be true copies, with the court. In any such prosecution, if written demand for proof of the existence of such laws or regulations is not made by the defendant prior to commencement of trial, he shall be deemed to have waived his right to make such demand, and thereafter such laws or regulations shall be presumed to exist. [1957 c 108 § 8.]

Complementary Laws: (1) **California;** Laws of California 1957, chapter 424 (A.B. No. 3081); Laws of California 1957, chapter 456 (A.B. No. 616).

(2) **Canada;** Privy Council Order 1957-466, Fisheries Act, British Columbia Fishing Regulations (Canada Gazette Part II, Volume 9).

(3) **Oregon;** Oregon Laws 1957, chapter 152 (H.B. No. 595).

Certificates of above laws were filed in office of Secretary of State of Washington on July 29, 1957.

75.12.270 Conservation of salmon resources in Pacific Ocean—Construction of RCW 75.12.200 through 75.12.270. Nothing in RCW 75.12.200 through 75.12.270 shall be construed to restrict or impair the authority of the director, consistent with and pursuant to the provisions of this title, to promulgate such regulations as he may deem necessary to administer RCW 75.12.200 through 75.12.270 and to effectuate its purposes, to administer and effectuate all other acts relating to food fish or shellfish, or to regulate or prohibit salmon net fishing in waters not covered under RCW 75.12.200 through 75.12.270; nor shall anything herein be construed to restrict or impair the authority of the director to authorize the use of nets for the taking of salmon in waters of the Pacific Ocean for purposes of scientific investigation, or to promulgate regulations he may deem necessary under the provisions of the Pacific Marine Fisheries Compact. [1957 c 108 § 9.]

Pacific Marine Fisheries Compact: Chapter 75.40 RCW.

75.12.280 Monofilament gill net webbing for catching salmon unlawful. It shall be unlawful for any person to install, use, operate, or maintain within any waters of the state any monofilament gill net webbing of any description for the purpose of catching salmon, and it shall be unlawful to take salmon by any such means or with such gear. [1959 c 309 § 26.]

75.12.650 "Angling" or "personal use" gear prohibited for commercial salmon fishing. "Angling" or "personal use" gear, in accordance with the provisions of RCW 75.04.070, RCW 75.04.080, RCW 75.04.100 and under the authority set forth in RCW 75.08.080, is prohibited for commercial salmon fishing. [1969 ex.s. c 23 § 1.]

Effective date—1969 ex.s. c 23: "The provisions of this act shall become effective January 1, 1970." [1969 ex.s. c 23 § 2.] This applies to RCW 75.12.650.

Chapter 75.16

CONSERVATION AND PROPAGATION

Sections

75.16.010	Taking food fish for propagation purposes restricted.
75.16.020	Planting fish—Consent required.
75.16.030	Prevention and suppression of infectious diseases and pests.
75.16.040	Destruction of seals, sea lions, and other fish predators.
75.16.050	Acceptance of funds or property—Disbursement of funds.
75.16.060	Fish stations, laboratories—Agreements with United States, etc.
75.16.070	Contracts and agreements as to fish or shellfish propagation.

75.16.100 Fish farming—Authorized—Permit—Rules and regulations—"Cultivation" defined—Scope.

75.16.110 Fish farming—License—Fee.

75.16.120 Fish farming—Salmon eggs for use in fish farming—Charge—Limitation.

Control of traffic along ocean highways for conservation of natural resources: RCW 43.51.680.

75.16.010 Taking food fish for propagation purposes restricted. It shall be unlawful for any person or government agency whatsoever, save the director and those authorized by him, to take food fish or shellfish for propagation, scientific, or other purposes within the waters of this state. The director or those authorized by him may take salmon or other food fish or shellfish for public propagation, scientific, or other purposes under such regulations as the director may prescribe to safeguard the interest of the fisheries of this state.

The director, in conjunction with the issuance of a permit and license for fish farming, may authorize taking of food fish or shellfish for propagation, under such regulations as he may prescribe to safeguard the interest of the fisheries of this state. [1971 c 35 § 1; 1955 c 12 § 75.16.010. Prior: 1949 c 112 § 42; Rem. Supp. 1949 § 5780-316.]

75.16.020 Planting fish—Consent required. It shall be unlawful to liberate, release, implant, transplant, or place food fish of any kind or description in any stream, river, pond, lake, or other waters of the state, either fresh or salt, without first obtaining the written consent of the director. [1955 c 12 § 75.16.020. Prior: 1949 c 112 § 40; Rem. Supp. 1949 § 5780-314.]

75.16.030 Prevention and suppression of infectious diseases and pests. The director shall have general supervision of the prevention of the spread and suppression of infectious, contagious, and communicable diseases and pests affecting food fish or shellfish, and shall have the power to prohibit the transportation or transplanting within the state from without, or from one area to another within the state, or the transportation from points in this state to points outside the state of any food fish or shellfish, or any material, organism, boats, scows, gear, or other equipment whatsoever which in his judgment may transmit any infectious or contagious disease or pests communicable to any food fish or shellfish.

The director shall have the power to make and enforce rules and regulations to prevent the spread, and effect the suppression of all infectious, contagious, dangerous, and communicable diseases and pests affecting food fish or shellfish. [1955 c 12 § 75.16.030. Prior: 1949 c 112 § 43; Rem. Supp. 1949 § 5780-317.]

75.16.040 Destruction of seals, sea lions, and other fish predators. The director shall cause his employees and hunters employed for the purpose, to kill and destroy seals and sea lions and other fish predators in the waters of the state and the offshore waters. He may expend such moneys as may from time to time be appropriated by the legislature for such purposes including, but not limited to purchase of firearms, ammunition,

dynamite, and other materials necessary to carry out the purposes hereof. He shall keep as nearly as possible an accurate record of the number of seals and sea lions that are so destroyed.

Any person other than an employee of the department killing or causing to be killed in the waters of the state, any common seal or sea lion shall be entitled to receive a bounty of not less than three dollars nor more than ten dollars, the amount to be designated by the director, from any moneys which may be appropriated by the legislature for the purposes of this section.

All moneys appropriated for such purposes by the legislature shall be expended under the direction of and upon vouchers approved by the director, who shall adopt rules and regulations providing for the proof of such killing and the surrender and destruction of the scalp, snout, or tail of such seal or sea lion. Any person who shall receive, or attempt to receive, any bounty for the killing of any common seal or sea lion not taken in the waters of the state of Washington is guilty of a gross misdemeanor and shall pay a fine of not less than two hundred and fifty dollars. [1955 c 12 § 75.16.040. Prior: 1949 c 112 § 44; Rem. Supp. 1949 § 5780-318.]

75.16.050 Acceptance of funds or property—Disbursement of funds. The director may accept money or real property from the United States, counties, municipalities, or other governmental units, or from any person, under conditions requiring the use of such property or money for specific purposes in furtherance of the protection, rehabilitation, preservation, or conservation of the state food fish and shellfish resources, or with the advice of the attorney general, in settlement of any claim for damages to such food fish and shellfish resources. Any real property so accepted must be useful for the protection, rehabilitation, preservation, or conservation of such fisheries resources.

The director is hereby designated the agent of the state to accept and receive all such funds and deposit them with the state treasurer who shall credit them to the contingent receipts fund created by RCW 43.79.250.

Whenever any money has been received and is to be spent for a specific purpose, the director shall submit to the governor duplicate copies of a statement setting forth the facts regarding such funds and the need for such expenditure and the estimated amount to be expended.

If the governor approves such estimate in whole or in part, he shall endorse on each copy of such statement his approval, with the amount approved, and transmit one copy of the same to the director authorizing him to make the expenditure. No expenditure shall be authorized in excess of the actual amount received, nor shall funds be expended for any purpose except the specific purpose for which they were received, unless the same were received in settlement of a claim for damages to the food fish or shellfish resources of the state, and in that event such funds so received may be expended for the protection, rehabilitation, preservation, or conservation of such resources. [1955 c 12 § 75.16.050. Prior: 1949 c 112 § 51; Rem. Supp. 1949 § 5780-325.]

75.16.060 Fish stations, laboratories—Agreements with United States, etc. (1) Consent of the state is hereby given to the United States for the continuance of present established fish cultural stations and laboratories located in this state as of April 1, 1949; for the establishment of one or more additional fish cultural stations, substations or laboratories to be constructed, maintained, and operated by the United States or the state, under the terms of agreements to be entered into between the United States and the director and the state game commission: *Provided*, That this consent shall be effective as to additional establishments only when the location of such additional establishments has been approved in advance by the director and the state game commission. The Secretary of the Interior, and his duly authorized agents are hereby accorded the right to conduct scientific investigations, fish hatching and fish cultural stations and all operations connected therewith at any and all times and in any manner that may by the Secretary be considered necessary and proper, in accordance with the provisions of certain acts of congress entitled: "An Act to provide for a five-year construction and maintenance program for the United States Bureau of Fisheries," approved May 21, 1930, and the provisions of the act of May 11, 1938 (Ch. 193, 52 Stat. 354, 16 U.S.C. 755-757), as amended by "An Act to amend the Act of May 11, 1938, for the conservation of the Fishery Resources of the Columbia River, and for other purposes," approved August 8, 1946, or acts amendatory thereof, at presently established stations and laboratories and at additional establishments when approval of the location of any such additional establishment has been given as provided in this section.

(2) The director and the state game commission are hereby authorized to enter into agreements with the United States for the construction and installation of fish cultural stations, laboratories, and devices in the Columbia River basin for improvement of feeding and spawning conditions for fish, for the protection of migratory fish from irrigation projects and for facilitating free migration of fish over obstructions, in accordance with the act of congress of May 11, 1938 (Ch. 193, 52 Stat. 354, 16 U.S.C. 755-757), as amended by "An Act to amend the Act of May 11, 1938, for the conservation of the Fishery Resources of the Columbia River, and for other purposes," approved August 8, 1946, or acts amendatory thereof.

(3) The director and the state game commission may acquire by gift, purchase, lease, easement, or condemnation the necessary title to, interest therein, rights of way over or licenses covering the use of lands where such construction or improvement is to be carried on by the United States.

(4) The director and the state game commission are hereby authorized to receive funds from the federal government for the construction, maintenance and operation of fish cultural stations, substations, laboratory or fish conservation devices or for any other purpose deemed necessary by the director or the state game commission for the rehabilitation and conservation of the fisheries resources of the Columbia River basin.

(5) After the construction and installation of any such fish cultural station, substation, laboratory or fish conservation devices, the department or the state game commission may maintain and operate the same in accordance with the terms of the agreement entered into with the United States in regard thereto. [1955 c 12 § 75.16.060. Prior: 1949 c 112 § 52; Rem. Supp. 1949 § 5780-326.]

75.16.070 Contracts and agreements as to fish or shellfish propagation. The director shall have the power to enter into contracts and agreements with the United States, or any state or territory thereof, or with any foreign government, or with any person, for the purpose of securing food fish or shellfish or eggs of the same, and for the erection and maintenance of eyeing stations, fish or shellfish hatcheries, rearing ponds, and other appliances or installations for the propagation of fish or shellfish within or without the territorial limits of the state; and the director shall execute and carry out any such contracts or agreements. [1955 c 12 § 75.16.070. Prior: 1949 c 112 § 53; Rem. Supp. 1949 § 5780-327.]

75.16.100 Fish farming—Authorized—Permit—Rules and regulations—"Cultivation" defined—Scope. The director may authorize by permit the cultivation of food fish and shellfish or other aquatic animals for commercial purposes, also known as fish farming or aquaculture, under such rules and regulations as he may prescribe. Cultivation shall include all aspects of breeding, obtaining eggs or young of, raising, preparing for consumption or for market, and marketing of the food fish, shellfish or other aquatic animals. Cultivation may be permitted on privately owned uplands, shorelands or tidelands, as well as on publicly owned uplands, tidelands, shorelands, or beds of navigable waters in accordance with procedures established for administration of such areas.

Clam farming, oyster farming, geoduck harvesting, and other activities in the nature of cultivation already authorized or licensed are not affected by this section. [1971 c 35 § 2.]

75.16.110 Fish farming—License—Fee. A license is required for each and every fish farm operated for commercial purposes at one or more locations on uplands, shorelands, tidelands, or beds of navigable waters, or in the waters of the state. The fee for said license is one hundred dollars per annum, and shall be paid for each and every year in which food fish, shellfish or other aquatic animals are being cultivated. A separate license is required for each county of the state in which a fish farm is operated by the same person, corporation, or other entity. [1971 c 35 § 3.]

75.16.120 Fish farming—Salmon eggs for use in fish farming—Charge—Limitation. The department may supply, at a reasonable charge, surplus salmon eggs to a person, corporation or other entity for use in fish farming or aquaculture: *Provided*, That the department of fisheries shall not intentionally create a surplus of

salmon to provide eggs for sale. [1974 ex.s. c 23 § 1; 1971 c 35 § 4.]

Chapter 75.18

PRESERVATION OF SALMON RESOURCES

Sections

75.18.005	Preamble.
75.18.010	Fishery districts created.
75.18.020	Commercial fishing—Silver salmon—District No. 1.
75.18.030	Commercial fishing—Chinook salmon—District No. 1.
75.18.040	Possession, transportation of silver salmon—District No. 1.
75.18.050	Possession, transportation of chinook salmon—District No. 1, Pacific Ocean.
75.18.060	Processors, wholesalers, etc.—Possession of silver salmon—District No. 1, Pacific Ocean.
75.18.070	Processors, wholesalers, etc.—Chinook salmon—Closed season dates, director may vary—Notice, hearing.
75.18.080	Commercial taking, transporting, delivery of salmon—Permits—Fees—Revocation.
75.18.090	Construction—1955 c 12.
75.18.100	Salmon enhancement facilities program—Purpose—Intent.
75.18.110	Salmon enhancement facilities program—Requirements and factors to be considered—Salmon advisory council, expiration date.

75.18.005 Preamble. The state of Washington has a major and substantial interest in the fisheries and fishing industry within its boundaries and a special interest in its salmon resources. Salmon within the waters of the state, including its coastal waters and offshore waters contiguous thereto, constitute a commercial asset and a vital food resource in which the state of Washington has a special interest, in that such salmon spawn in the fresh water streams of the state of Washington, migrate to the sea and, in response to their anadromous cycle, return to the fresh water streams of Washington, from which they originate, to spawn and die. Serious conditions and hazards detrimental to the preservation of this salmon supply have arisen and are now present, both in the fresh water streams of the state of Washington and in the salt waters of bays, inlets, canals, coves, sounds and estuaries, and in its coastal waters and offshore waters contiguous thereto, as a result of the extensive catching and taking of silver and chinook salmon within the described waters in such quantities as substantially to deplete the spawning and the source of existing and future salmon supplies and resources.

The preservation of the salmon industry and the salmon resources of the state of Washington is vital to the state's economy, and effective measures and remedies are necessary to prevent loss of such salmon resources due to the taking of immature fish and salmon present in the state's coastal and offshore waters, from which waters such salmon migrate, feed and return to the streams of this state to spawn.

It has proven impossible in seeking to regulate catching and taking of such salmon to distinguish between salmon taken from waters of the Pacific Ocean over which the state has jurisdiction and those taken outside

the limits of the state's jurisdiction and brought within the boundaries of the state.

Research by the department of fisheries of the state has established that silver and chinook salmon found in the waters of district No. 2 and the Columbia River district, as herein defined, are substantially mature salmon. The silver and chinook salmon found during certain periods within the waters of district No. 1, herein defined, are for the most part immature salmon, the taking of which would prevent the return of an adequate number of such salmon to the spawning grounds in the streams of the state and risk the destruction or substantial depletion of the state's salmon resources, and would constitute an irreparable economic waste. [1955 c 12 § 75.18.005. Prior: 1953 c 147 § 1.]

75.18.010 Fishery districts created. The following fishery districts are hereby created:

(1) District No. 1, as used in this chapter, shall include the Straits of Juan de Fuca, and the waters of the Pacific Ocean over which the state of Washington has jurisdiction, exclusive of bays, inlets, canals, coves, sounds and estuaries.

(2) District No. 2, as used in this chapter, shall include all lands and waters over which the state of Washington has jurisdiction, excepting therefrom district No. 1, as herein defined. [1955 c 12 § 75.18.010. Prior: 1953 c 147 § 2.]

75.18.020 Commercial fishing—Silver salmon—District No. 1. It shall be unlawful for commercial purposes to fish for or take in the waters of district No. 1, as herein defined, silver salmon (*Oncorhynchus kisutch*) between the first day of November and the fifteenth day of June of the year following, both dates inclusive. [1955 c 12 § 75.18.020. Prior: 1953 c 147 § 3.]

75.18.030 Commercial fishing—Chinook salmon—District No. 1. It shall be unlawful for commercial purposes to fish for or take in the waters of district No. 1, as herein defined, chinook salmon (*Oncorhynchus tshawytscha*) between the first day of November and the fourteenth day of March of the year following, both dates inclusive. [1955 c 12 § 75.18.030. Prior: 1953 c 147 § 4.]

75.18.040 Possession, transportation of silver salmon—District No. 1. It shall be unlawful for commercial purposes for any person to have in his possession or transport through the waters of district No. 1, as herein defined, any fresh silver salmon (*Oncorhynchus kisutch*) taken from said waters or from the waters of the Pacific Ocean during the period from the first day of November and the fifteenth day of June of the year following, both dates inclusive. [1955 c 12 § 75.18.040. Prior: 1953 c 147 § 5.]

75.18.050 Possession, transportation of chinook salmon—District No. 1, Pacific Ocean. It shall be unlawful for commercial purposes for any person to have in his possession or transport through the waters of district

No. 1, as herein defined, any fresh chinook salmon (*Oncorhynchus tshawytscha*) taken from said waters or from the waters of the Pacific Ocean during the period from the first day of November and the fourteenth day of March of the year following, both dates inclusive. [1955 c 12 § 75.18.050. Prior: 1953 c 147 § 6.]

75.18.060 Processors, wholesalers, etc.—Possession of silver salmon—District No. 1, Pacific Ocean. It shall be unlawful for any person in the state of Washington engaged in the business of canning, packing, processing, freezing, salting, smoking, kippering, preserving in ice, or otherwise involved in dealing in or curing any food fish or shellfish, or in wholesale selling of food fish or shellfish for commercial purposes, to have in his possession any silver salmon (*Oncorhynchus kisutch*) caught or taken during the period from the first day of November of any year to the fifteenth day of June of the following year from the waters of the Pacific Ocean or district No. 1. [1955 c 12 § 75.18.060. Prior: 1953 c 147 § 7.]

75.18.070 Processors, wholesalers, etc.—Chinook salmon—Closed season dates, director may vary—Notice, hearing. It shall be unlawful for any person in the state of Washington engaged in the business of canning, packing, processing, freezing, salting, smoking, kippering, preserving in ice, or otherwise involved in dealing in or curing any food fish or shellfish, or in wholesale selling of food fish or shellfish for commercial purposes, to have in his possession any chinook salmon (*Oncorhynchus tshawytscha*) caught or taken during the period from the first day of November of any year to the fourteenth day of March of the following year from the waters of the Pacific Ocean or district No. 1: *Provided*, That with respect to the closed seasons defined in this chapter, the director of fisheries, upon due notice and hearing, and upon investigation, may, in accordance with his judgment, vary any of the opening or closing dates thereof. Notice of such hearing shall appear in not less than two issues of a newspaper of general circulation at the state capital. [1955 c 12 § 75.18.070. Prior: 1953 c 147 § 8.]

75.18.080 Commercial taking, transporting, delivery of salmon—Permits—Fees—Revocation. Every person or persons, firm or corporation operating a fishing vessel of any description used in the commercial taking or catching of salmon in offshore waters and the transporting or bringing the same in and through the waters of the state of Washington and delivering the same in any place or port in the state of Washington shall, as a condition of doing so, obtain a permit from the director of fisheries. The fee for said permit shall be two hundred dollars for the vessel and operator, such permit to be effective during the calendar year in which issued: *Provided*, That persons operating fishing vessels licensed under RCW 75.28.085 may apply the delivery permit fee of ten dollars against the fees outlined hereinabove except those holding a valid troll license are exempt from said fees: *Provided further*, That if it appears to the director of fisheries, after investigation, that the

operation of such vessel under such permit tends to result in the impairment, depletion, or destruction of the salmon resource and supply of this state and in bringing into this state salmon products prohibited by law, in that event, the director under such regulations and terms as he may prescribe, may revoke said permit to use and operate such boat in the waters of this state, and in the event of the revocation of such permit, the further operation of such vessel as hereinabove set forth shall then be unlawful. [1977 ex.s. c 327 § 3; 1971 ex.s. c 283 § 1; 1955 c 12 § 75.18.080. Prior: 1953 c 147 § 9.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

Effective dates—1971 ex.s. c 283: "The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The provisions of sections 1 to 10 inclusive of this 1971 amendatory act shall take effect on January 1, 1972." [1971 ex.s. c 283 § 16.] This applies to RCW 75.28.081, 75.28.375 and to the 1971 amendments to RCW 75.12.010, 75.18.080, 75.28.012, 75.28.013, 75.28.060, 75.28.085, 75.28.087, 75.28.095, 75.28.130, 75.28.140, 75.28.190 and 75.28.220.

Certain license fees double as to nonresidents: RCW 75.28.375.

Permit under RCW 75.28.085 plus added fee for each man aboard will satisfy requirements of RCW 75.18.080: RCW 75.28.085.

Permittee under RCW 75.18.080 not required to obtain permit under RCW 75.28.085: RCW 75.28.085.

75.18.090 Construction—1955 c 12. Nothing in this chapter shall be construed to restrict or impair the authority of the director of fisheries consistent with and pursuant to the provisions of this chapter from issuing and publishing such regulations as, after investigation, he may deem necessary to administer this chapter and to effectuate its purposes, or to administer and effectuate all other acts governing or affecting the department of fisheries, nor shall anything herein be construed to restrict or impair the authority of the director to issue and publish regulations he may find necessary under the provisions of The Pacific Marine Fisheries Compact. [1955 c 12 § 75.18.090. Prior: 1953 c 147 § 11.]

75.18.100 Salmon enhancement facilities program—Purpose—Intent. The long range economic development goals for the state of Washington shall include the restoration of salmon runs to provide an increased supply of this valuable renewable resource for the benefit of commercial and recreational users and the economic well-being of the state. For the purpose of providing funds for the planning, acquisition, construction, improvement, and operation of salmon enhancement facilities within the state it is the intent of the legislature that the revenues received from fees from the issuance of vessel delivery permits, charter boat licenses, trolling gear licenses, gill net gear licenses, purse seine gear licenses, reef net gear licenses, anadromous salmon angling licenses and all moneys received from all privilege fees and fish sales taxes collected on fresh or frozen salmon or parts thereof be utilized to fund such costs.

The salmon enhancement program funded by commercial and recreational fishing fees and taxes shall be for the express benefit of all persons whose fishing activities fall under the management authority of the

Washington department of fisheries and who actively participate in the funding of the enhancement costs through the fees and taxes set forth in chapters 75.28 and 75.32 RCW or through other adequate funding methods. [1977 ex.s. c 327 § 1.]

Severability—1977 ex.s. c 327: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 327 § 34.]

Effective date—1977 ex.s. c 327: "This 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 327 § 35.]

75.18.110 Salmon enhancement facilities program—Requirements and factors to be considered—Salmon advisory council, expiration date. (1) The department shall not acquire, construct, or substantially improve any salmon enhancement facility unless the requirements of this section are met.

(a) The productivity of any salmon propagation facility is very dependent on water quantity and quality. Since there is a limited number of water sources which meet the critical needs of a facility it is imperative that these sources are acquired. Therefore, site acquisitions and preliminary design shall be considered by the department as generally having priority over project development.

(b) Prior to expending any moneys for the construction and development of any particular salmon propagation facility, except for site acquisition and preliminary design, the department shall, with the advice of the advisory council created in subsection (2) of this section, give consideration to the following factors with respect to that facility:

(i) The department's management authority over propagated salmon;

(ii) The level of expected Canadian interception on the propagated salmon and whether this would be acceptable;

(iii) Whether an acceptable agreement has been reached on the status of treaty Indian salmon harvest; and

(iv) Whether there can be a maximum harvest of propagated salmon with a tolerable impact on other salmonid stocks, both natural and artificial, and on their environment. The department shall consult on this matter with the department of game.

(2) To aid and advise the department in the performance of its functions as specified by this section with regard to the salmon enhancement program, a salmon advisory council is hereby created. The advisory council shall consist of ten members appointed by the governor; the director of the department of fisheries, who shall be chairman; the director of the department of game, or the director's designee; one member of the senate to be appointed by the president of the senate; and one member of the house of representatives to be appointed by the speaker of the house of representatives. Of the members appointed by the governor, two shall represent troll fishermen; two shall represent gill net fishermen, of which one shall be from the Puget Sound area and one from the southwest Washington area; one shall represent purse seine fishermen; one shall represent owners of

charter boats; two shall represent sportsmen; and two shall represent fish processors, of which one shall represent fresh or frozen fish processors and one shall represent canneries.

The terms of the initial members appointed by the governor expire on December 31, 1979. Thereafter, all members appointed by the governor shall serve terms of two years.

The advisory council shall be convened by the director prior to the decision to expend any funds for construction and development of any salmon propagation facility. The council shall advise the director with regard to the considerations listed in subsection (1)(b) of this section and any other factors the council deems relevant with respect to the proposed facility.

Vacancies shall be filled in the same manner as original appointments. Except for the director of the department of game and legislative members, members shall receive reimbursement through the department of fisheries for travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

The director of the department of game, or the director's designee, shall receive reimbursement through the department of game for travel expenses incurred in the performance of his or her duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The legislative members shall be deemed engaged in legislative business while in attendance upon the business of the council and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120 as now existing or hereafter amended.

The salmon advisory council shall cease to exist on December 31, 1989. [1979 c 60 § 3; 1977 ex.s. c 327 § 2.]

Severability—1979 c 60: See note following RCW 75.28.095.

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

Chapter 75.20

RESTRICTIONS AS TO DAMS, DITCHES, AND OTHER USES OF WATERS AND WATERWAYS

Sections	
75.20.010	Columbia River fish sanctuary—Established.
75.20.020	Columbia River fish sanctuary—Acquisition and abatement of dams—Water rights—Condemnation actions.
75.20.030	Columbia River fish sanctuary—Rivers not included in sanctuary.
75.20.040	Fish guards required—Penalty for failure.
75.20.050	Water flow to be maintained—May refuse permit to divert water.
75.20.060	Fishways required in dams, obstructions—Remedies for failure.
75.20.061	Director may modify, etc., inadequate fishways and protective devices.
75.20.070	Unlawful to fish in or interfere with fishways, screens, etc.
75.20.080	Unlawful to interfere with or damage fish ladders, guards, etc., or fish traps.
75.20.090	If fishway is impractical, fish hatcheries may be provided in lieu.
75.20.100	Hydraulic projects or other work—Plans and specifications—Approval—Failure to follow or carry

out approval conditions—Penalty—

Emergencies.

75.20.110

75.20.120

Columbia River fish sanctuary—1960 act.

Columbia River fish sanctuary—"Person" defined.

75.20.010 Columbia River fish sanctuary—Established. All streams and rivers tributary to the Columbia River downstream from McNary Dam are hereby reserved as an anadromous fish sanctuary against undue industrial encroachment for the preservation and development of the food and game fish resources of said river system and to that end there shall not be constructed thereon any dam of a height greater than twenty-five feet that may be located within the migration range of any anadromous fish as jointly determined by the director of fisheries and the director of game, nor shall waters of the Cowlitz River or its tributaries or of the other streams within the sanctuary area be diverted for any purpose other than fisheries in such quantities that will reduce the respective stream flows below the annual average low flow, as delineated in existing or future United States Geological Survey reports: *Provided*, That when the flow of any of the streams referred to in this section is below the annual average, as delineated in existing or future United States Geological Survey reports, water may be diverted for use, subject to legal appropriation, upon the concurrent order of the director of fisheries and director of game. [1955 c 12 § 75.20.010. Prior: 1949 c 9 § 1; Rem. Supp. 1949 § 5944-2.]

75.20.020 Columbia River fish sanctuary—Acquisition and abatement of dams—Water rights—Condemnation actions. The director of fisheries and the director of game, shall acquire and abate any dam or other obstruction, or acquire any water right which may have become vested on any streams or rivers tributary to the Columbia River downstream from McNary Dam which may be in conflict with the provisions of RCW 75.20.010. Any condemnation action necessary under the provisions of this section shall be instituted under the provisions of chapter 120, Laws of 1947, and in the manner provided for the acquisition of property for public use of the state. [1955 c 12 § 75.20.020. Prior: 1949 c 9 § 2; Rem. Supp. 1949 § 5944-3.]

75.20.030 Columbia River fish sanctuary—Rivers not included in sanctuary. The provisions of RCW 75.20.010 and 75.20.020 shall not apply to the waters of the North Fork of the Lewis River, nor the White Salmon River (Big White Salmon River). [1955 c 12 § 75.20.030. Prior: 1949 c 9 § 3; Rem. Supp. 1949 § 5944-4.]

75.20.040 Fish guards required—Penalty for failure. Every ditch, channel, canal or waterpipe used for conducting water from any lake, river or stream, for irrigation, manufacturing, domestic or other purposes, shall be provided at its entrance or intake with a fish guard so as to prevent the passage of fish into such ditch, channel or waterpipe and subject to the approval of the director, which shall be constantly maintained at all times when water is taken or admitted into such ditch, channel, canal, or waterpipe: *Provided*, That such

fish guards and screens shall be installed at such places and times as shall be prescribed by the director upon thirty days' notice to the owner or owners of any such water conduit. Every owner, manager, agent or person in charge of such ditch, channel, canal, or waterpipe who shall fail to comply with the provisions of this section is guilty of a gross misdemeanor.

Each day the end of the ditch, channel, canal or waterpipe is not equipped with this covering as provided shall constitute a separate offense. If within thirty days after notice to equip any such ditch, channel, canal, or waterpipe such person shall fail to do so, the director is hereby authorized to take possession of the same in the name of the state of Washington, and to close the same to the entrance of any water until such time as the ditch shall be properly equipped, and the expense incident thereto shall constitute a lien upon the ditch, channel, canal, or waterpipe and upon the real and personal property of the person owning the same. Notice of such lien shall be filed and recorded in the office of the county auditor in the county in which such action is taken. [1955 c 12 § 75.20.040. Prior: 1949 c 112 § 45; Rem. Supp. 1949 § 5780-319.]

75.20.050 Water flow to be maintained—May refuse permit to divert water. It is hereby declared to be the policy of this state that a flow of water sufficient to support game fish and food fish populations be maintained at all times in the streams of this state.

The supervisor of hydraulics shall give the director of fisheries and the director of game notice of each application for a permit to divert water, or other hydraulic permit of any nature, and the director of fisheries and director of game shall have thirty days after receiving such notice in which to state their objections to the application, and the permit shall not be issued until such thirty days period has elapsed.

The supervisor of hydraulics may refuse to issue any permit to divert water, or any hydraulic permit of any nature, if, in the opinion of the director of fisheries or director of game, such permit might result in lowering the flow of water in any stream below the flow necessary to adequately support food fish and game fish populations in the stream.

The provisions of this section shall in no way affect existing water rights. [1955 c 12 § 75.20.050. Prior: 1949 c 112 § 46; Rem. Supp. 1949 § 5780-320.]

75.20.060 Fishways required in dams, obstructions—Remedies for failure. Every dam or other obstruction across or in any stream shall be provided with a durable and efficient fishway, which shall be maintained in a practical and effective condition in such place, form and capacity as the director may approve, for which plans and specification shall be furnished by the director upon application to him, and which shall be kept open, unobstructed and supplied with a sufficient quantity of water to freely admit the passage of fish through the same. Every owner, manager, agent or person in charge of such dam or obstruction who shall fail to comply with the provisions of this section is guilty of a gross misdemeanor.

If any person or government agency fails to construct and maintain such fish ladder or fishway or to remove such dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice thereof has been served upon the owner, his agent, or the person in charge thereof, the director may construct a suitable fish ladder or fishway, or remove such dam or obstruction, and the actual cost in case of construction of fishway thereof shall constitute a lien upon the dam and upon all the personal property of the person or government agency owning the same. Notice of such lien shall be filed and recorded in the office of the county auditor of the county in which such dam or obstruction is situated. Such lien may be foreclosed in any action brought in the name of the state.

If any person or government agency fails to make any such fishway or remove such dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice thereof has been served on the owner, his agent, or the person in charge, such dam or obstruction shall thereby become a public nuisance and the director may take possession thereof in his own name or in the name of the state and destroy it and no liability shall attach for such destruction. [1955 c 12 § 75.20-.060. Prior: 1949 c 112 § 47; Rem. Supp. 1949 § 5780-321.]

75.20.061 Director may modify, etc., inadequate fishways and protective devices. In the event any fish passage facility or fish protective device as set forth in RCW 75.20.040 and 75.20.060 which have been in existence or are existing at the time of enactment of this act, is determined by the director to be inadequate for the purposes for which it was intended; the director in addition to other authority granted in this chapter may in his discretion, remove, relocate, reconstruct, or modify said device, without cost for materials and labor to the owner or owners thereof: *Provided*, That the director may not materially modify the amount of flow of water through the facility or device. Thereafter such fish passage facility or fish protective device shall be maintained at the expense of the person or governmental agency owning said obstruction or water diversion in accordance with RCW 75.20.040 and 75.20.060. [1963 c 153 § 1.]

Director of game may modify, etc., inadequate fishways and protective devices: RCW 77.16.221.

75.20.070 Unlawful to fish in or interfere with fishways, screens, etc. It shall be unlawful for any person to fish for, take, injure, kill, or molest any fish in any fishway or fish ladder, fish screens, or other protective devices, or to interfere in any manner whatsoever with the proper operation of any fishway, fish ladder, fish screens, or other protective devices. [1955 c 12 § 75.20-.070. Prior: 1949 c 112 § 39; Rem. Supp. 1949 § 5780-313.]

75.20.080 Unlawful to interfere with or damage fish ladders, guards, etc., or fish traps. It shall be unlawful for any person to break open, open, unlock, damage, interfere with, injure, or destroy any fish ladder, fish guard, screen, fish stop, fish protective device, bypass, or

part thereof, or any fish trap operated by the department. [1955 c 12 § 75.20.080. Prior: 1949 c 112 § 50; Rem. Supp. 1949 § 5780-324.]

75.20.090 If fishway is impractical, fish hatcheries may be provided in lieu. In the event that any person or government agency desires to construct or maintain a dam or other hydraulic work in any of the streams of this state of a type making a fish ladder or fishway thereover impracticable, in the opinion of the director, then such person or government agency, before any construction work shall commence on such dam or other hydraulic work shall at the option of the director (1) convey to the state a site or sites of a size and dimensions satisfactory to the director, at such place as may be selected by the director, and erect thereon a fish hatchery or fish hatcheries, rearing ponds and other buildings according to plans and specifications to be furnished by said person or government agency subject to the approval of the director and enter into an agreement with director secured by good and sufficient bond, to furnish all water and lights, without expense, and necessary sums of money to operate and maintain said hatchery or hatcheries and rearing ponds or (2) enter into an agreement with the director secured by good and sufficient bond to pay to the state such initial money and make such annual payments of additional money to the state as the director may determine are necessary to expand, maintain, and operate additional facilities at existing hatcheries within a reasonable distance of such dam or other hydraulic work to compensate for the damages sustained by the erection of any such dam or other hydraulic work. Any decision of the director hereunder shall be subject to review in the superior court of the state for Thurston county.

Any person or government agency who fails to comply with the provisions of this section is guilty of a gross misdemeanor and each day that such person or government agency carries on construction work on such dam or hydraulic work or operates any such dam or hydraulic work without complying with the provisions of this section constitutes a separate offense. [1955 c 12 § 75.20.090. Prior: 1949 c 112 § 48; Rem. Supp. 1949 § 5780-322.]

75.20.100 Hydraulic projects or other work—Plans and specifications—Approval—Failure to follow or carry out approval conditions—Penalty—Emergencies. In the event that any person or government agency desires to construct any form of hydraulic project or other work that will use, divert, obstruct, or change the natural flow or bed of any river or stream or that will utilize any of the waters of the state or materials from the stream beds, such person or government agency shall submit to the department of fisheries and the department of game full plans and specifications of the proposed construction or work, complete plans and specifications for the proper protection of fish life in connection therewith, the approximate date when such construction or work is to commence, and shall secure the written approval of the director of fisheries and the

director of game as to the adequacy of the means outlined for the protection of fish life in connection therewith and as to the propriety of the proposed construction or work and time thereof in relation to fish life, before commencing construction or work thereon. The director of fisheries and the director of game shall designate and authorize certain employees of their respective departments to act in place of themselves by signing written approvals for such designations and authorizations. If any person or government agency commences construction on any such works or projects without first providing plans and specifications subject to the approval of the director of fisheries and the director of game for the proper protection of fish life in connection therewith and without first having obtained written approval of the director of fisheries and the director of game as to the adequacy of such plans and specifications submitted for the protection of fish life, or if any person or government agency fails to follow or carry out any of the requirements or conditions as are made a part of such approval, he is guilty of a gross misdemeanor. If any such person or government agency be convicted of violating any of the provisions of this section and continues construction on any such works or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such. For the purposes of this section, "bed" shall mean that portion of a river or stream and the shorelands within the ordinary high water lines.

Provided, That in case of an emergency arising from weather or stream flow conditions the department of fisheries or department of game, through their authorized representatives, shall issue immediately upon request oral permits to a riparian owner or lessee for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream without the necessity of submitting prepared plans and specifications or obtaining a written permit prior to commencing work. Conditions of an oral permit shall be reduced to writing within thirty days and complied with as provided for in this section. [1975 1st ex.s. c 29 § 1; 1967 c 48 § 1; 1955 c 12 § 75.20.100. Prior: 1949 c 112 § 49; Rem. Supp. 1949 § 5780-323.]

75.20.110 Columbia River fish sanctuary—1960 act. For the purpose of conserving the state's fishery resources the powers of any person authorized to construct or operate dams or to appropriate water in the state are hereby limited in that no such person shall construct, complete or operate, either for himself or as an agent or independent contractor for another, any dam or other obstruction over twenty-five feet high on any tributary stream of the Columbia River downstream from McNary Dam, including the Cowlitz River and its tributaries, within the migration range of anadromous fish as jointly determined by the directors of fisheries and game, except the north fork of the Lewis River and the White Salmon River (Big White Salmon River), nor shall any such person obtain or use a federal license for such purpose; nor shall any such person divert any water from any such stream in such quantities that will reduce the respective stream flows below the annual average

low flow as set forth in existing or future United States Geological reports: *Provided*, That when the flow is below such annual average low flow, then such person may divert water, subject to legal appropriation, only upon the concurrent order of the directors of fisheries and game. [1961 c 4 § 1; Initiative Measure to the Legislature No. 25.]

Severability—1961 c 4: "If any section or provision or part thereof of this act shall be held unconstitutional or for any other reason invalid, the invalidity of such section, provision or part thereof shall not affect the validity of the remaining sections, provisions or parts thereof which are not judged to be invalid or unconstitutional." [1961 c 4 § 3; Initiative Measure to the Legislature No. 25.] This applies to RCW 75.20.110 and 75.20.120.

75.20.120 Columbia River fish sanctuary—"Person" defined. The term "person" as used in RCW 75.20.110 shall include any municipal corporation or other political subdivision of this state or another state, any other public or quasi-public corporation, any private corporation or other organization organized under the laws of this state or another state, and any individual or group of individuals. [1961 c 4 § 2; Initiative Measure to the Legislature No. 25.]

Chapter 75.24 SHELLFISH

Sections

75.24.010	Oyster reserves established.
75.24.020	Oyster reserve boundaries marked.
75.24.030	Sale, lease, disposal of oyster reserves.
75.24.040	Taking shellfish from oyster reserves.
75.24.050	Taking shellfish contrary to law or orders—Penalty—Confiscation of property.
75.24.060	Reserves to be productive, self-maintaining—Furnish shellfish stock—Development—Harvesting for personal use, when.
75.24.070	Sale of shellfish from reserves.
75.24.080	Infested shellfish areas—Designation—Restrictions.
75.24.090	Culled shellfish must be returned to beds—Penalty.
75.24.100	Geoduck clams, harvesting for commercial purposes—License—Gear—Director may impose limitations—Compliance with federal law (OSHA).

Sanitary control of shellfish: Chapter 69.30 RCW.

75.24.010 Oyster reserves established. The following named areas constitute the existing oyster reserves of the state, such reserves being more completely described in maps and plats on file in the office of the commissioner of public lands and in the office of the auditor of the county in which the reserve is located:

1. PUGET SOUND OYSTER RESERVES:

- (a) Totten Inlet reserves (sometimes known as Oyster Bay reserves), located in Totten Inlet, Thurston county;
- (b) Eld Inlet reserves (sometimes known as Mud Bay reserves), located in Mud Bay, Thurston county;
- (c) Oakland Bay reserves, located in Oakland Bay, Mason county;
- (d) North Bay reserves (sometimes known as Case Inlet reserves), located in Case Inlet, Mason county.

2. WILLAPA HARBOR OYSTER RESERVES:

- (a) Nemah reserve, south and west sides of reserve located along Nemah River channel, Pacific county;
- (b) Long Island reserve, located at south end and along west side of Long Island, Willapa Harbor, Pacific county;
- (c) Long Island Slough reserve, located at south end and along east side of Long Island, Willapa Harbor, Pacific county;
- (d) Bay Center reserve, located in the Palix River channel, extending from Palix River bridge to beyond Bay Center to north of Goose Point, Willapa Harbor, Pacific county;
- (e) Willapa River reserve, located in the Willapa River channel extending west and up-river from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel, Willapa Harbor, Pacific county. [1955 c 12 § 75.24.010. Prior: 1949 c 112 § 54; Rem. Supp. 1949 § 5780-401.]

75.24.020 Oyster reserve boundaries marked. As soon as an appropriation is made therefor, the director shall erect monuments, establishing the boundaries of the several oyster reserves in the state. [1955 c 12 § 75.24.020. Prior: 1949 c 112 § 58; Rem. Supp. 1949 § 5780-405.]

75.24.030 Sale, lease, disposal of oyster reserves. The oyster reserves of the state shall not be sold, leased, or otherwise disposed of: *Provided*, That in event the director recommends the sale, lease, or disposal of any of the reserves, or parts thereof, the same may be sold, leased or disposed of by the land commissioner in the manner provided by law for the sale, lease, or disposal of state land. [1955 c 12 § 75.24.030. Prior: 1949 c 112 § 55; Rem. Supp. 1949 § 5780-402.]

75.24.040 Taking shellfish from oyster reserves. It shall be unlawful to take shellfish from the oyster reserves of the state except as authorized by the director. [1955 c 12 § 75.24.040. Prior: 1949 c 112 § 60; Rem. Supp. 1949 § 5780-407.]

75.24.050 Taking shellfish contrary to law or orders—Penalty—Confiscation of property. If any person takes oysters or clams from any of the state oyster reserves or any tideland under the jurisdiction of the state of Washington, contrary to statutes or orders of the director, or goes upon said oyster or clam land and rakes up, or otherwise prepares oysters or clams to facilitate the taking of same, he is guilty of a gross misdemeanor, and any oyster or clam taking appliance such as boats, dredges, motor vehicles or other appliances used in violation of such statutes or any of such orders may be seized by the director and shall be confiscated by the state. [1955 c 12 § 75.24.050. Prior: 1949 c 112 § 62; Rem. Supp. 1949 § 5780-409.]

75.24.060 Reserves to be productive, self-maintaining—Furnish shellfish stock—Development—Harvesting for personal use, when. It is hereby declared

to be the policy of the state to improve the oyster reserves of the state to the end that all may finally become productive, and to have these reserves yield a revenue sufficient for their maintenance and betterment. In fixing the price at which oysters and other shellfish shall be sold from the reserves, the director shall take into consideration such policy. It is further declared to be the policy of the state to maintain the oyster reserves for the purpose of furnishing a supply of shellfish to growers and processors and for the stocking of public beaches: *Provided*, That shellfish may be harvested for personal use as prescribed by the director.

The director shall protect all reserves, reseed, replant, issue cultch permits and do such other things as in his judgment are necessary for their care and protection. [1969 ex.s. c 91 § 1; 1955 c 12 § 75.24.060. Prior: 1949 c 112 § 56; Rem. Supp. 1949 § 5780-403.]

75.24.070 Sale of shellfish from reserves. The director shall have the power to determine whether oysters and other shellfish from the oyster reserves of the state shall be sold by the bushel at a price set by the director or whether certain quantities or all of such oysters and other shellfish should be sold for cash at public auction or by sealed bids in such amounts as the director shall from time to time determine.

To maintain the permanency of local communities and industries, the prospects of fulfillment of contract requirement, and to restrain monopolistic controls endangering competition in the industry, the director shall have the power to determine the number of bushels which shall be sold to any person, firm, or corporation; and when sold at public auction, the right to reject any and all bids.

The director shall have the power to determine the time, place, and manner of holding the auctions and sales provided for in this section. [1955 c 12 § 75.24.070. Prior: 1949 c 112 § 57; Rem. Supp. 1949 § 5780-404.]

75.24.080 Infested shellfish areas—Designation—Restrictions. The director shall have the power to determine and designate areas in which infection or infestation of shellfish is present. These shall be called "restricted shellfish areas." No person shall transplant any shellfish within such restricted areas nor transport any shellfish, or any material, or organism, or boats, scows, or other equipment used in taking, handling, or processing shellfish into or out of such restricted areas without first having obtained a permit from the director. [1955 c 12 § 75.24.080. Prior: 1949 c 112 § 59; Rem. Supp. 1949 § 5780-406.]

75.24.090 Culled shellfish must be returned to beds—Penalty. It shall be unlawful for any person to destroy oysters or clams taken from their natural beds, by assorting and culling them on land or shore and leaving the culled oysters or clams there to die; but in all cases the culled oysters or clams must be returned to their natural beds, or to the private beds for cultivation, except as the director may otherwise provide. [1955 c 212 § 7; 1955 c 12 § 75.24.090. Prior: 1949 c 112 § 61; Rem. Supp. 1949 § 5780-408.]

75.24.100 Geoduck clams, harvesting for commercial purposes—License—Gear—Director may impose limitations—Compliance with federal law (OSHA). (1) The director of fisheries may at his discretion and with the approval of the commissioner of public lands issue licenses for the harvesting of geoduck clams for commercial purposes from specific tracts of beds of navigable waters of the state of Washington for which harvest rights have been granted by the department of natural resources except that he may not authorize harvesting for commercial purposes on bottoms which are shallower than eighteen feet below mean lower low water (o.o. ft.), or which lie in an area bounded by the line of ordinary high tide (mean high tide) and a line two hundred yards seaward from and parallel to said line of ordinary high tide. If the director shall determine that the numbers of units of gear are sufficient to harvest the known available crop and that additional units of gear might prove damaging to the resource or its habitat, he may suspend the issuance of such additional licenses for the balance of any given year or until he determines there is need for additional units of gear to achieve a sustained harvest. All harvesting shall be done with hand held, manually operated water jet or suction device guided and controlled from under water by scuba or other diver. The director shall also determine from time to time the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit and he may require modification of the gear or cessation of its use if he determines that it is being operated in a wasteful or destructive manner or that its operation tends to cause permanent damage to the bottom or adjacent shellfish populations.

(2) Any person, including the person's agents or representatives, who is issued or currently holds a license under subsection (1) of this section shall comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979 (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). Violations of these safety standards and regulations shall be deemed to be violations of this subsection: *Provided*, That for the purposes of this section and RCW 79.01.570 all persons who dive for geoducks are deemed to be "employees" as defined by the federal occupational safety and health act. Violations of this subsection are grounds for suspension or cancellation of the license upon ten days written notice to the licensee and following a hearing on the matter. In no event shall a license be suspended or canceled if the violation has been corrected within ten days. If there is a substantial probability that a particular violation of the commercial diving standards could result in death or serious physical harm to any person engaged in harvesting geoduck clams, the license shall be suspended immediately until the violation causing the probability of death or serious physical harm has been corrected: *Provided further*, That for the purposes of this subsection, if the licensee is the holder of a tract license and contracts with another entity for the harvesting of geoducks, the license shall not be suspended or canceled if the licensee

terminates its business relationship with such entity until compliance with this subsection is secured. [1979 1st ex.s. c 141 § 1; 1969 ex.s. c 253 § 1.]

Liberal construction—1969 ex.s. c 253: "The provisions of this act shall be liberally construed." [1969 ex.s. c 253 § 5.] This refers to RCW 75.24.100, 75.28.280, 75.28.281 and 75.28.287.

Severability—1969 ex.s. c 253: "If any provisions of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 253 § 6.] This applies to RCW 75.24.100, 75.28.280, 75.28.281 and 75.28.287.

Chapter 75.25 RAZOR CLAM DIGGING

Sections

75.25.010	Legislative intent.
75.25.020	License required.
75.25.030	Licenses—Agent's fee—Rules.
75.25.040	License fees.
75.25.050	Licenses—Exhibiting—Enforcement.
75.25.060	Penalty for violations.
75.25.070	Annual report to the legislature.
75.25.900	Severability.
75.25.910	Effective date—1979 1st ex.s. c 243.

75.25.010 Legislative intent. The legislature, recognizing that the digging of razor clams, *Siliqua patula*, is a major recreational asset to the state, declares that it is the policy of the state to improve recreational razor clam digging for residents of the state. The legislature finds that clam wastage and violation of daily bag limits by some clam diggers has made effective clam resource conservation extremely difficult. It is the intent of the legislature to provide a razor clam license program that will be an aid to effective management and conservation of the razor clam resource. It is also the intent of the legislature to provide a source of funds that can be used to defray the expenses of added enforcement, enhancement, research, and educational programs related to razor clams. [1979 1st ex.s. c 243 § 1.]

75.25.020 License required. It is unlawful for any person to take, dig for, or have in his or her possession any razor clam that is taken for personal use from the clam beds of this state without first having obtained and having in his or her possession a razor-clamming license as provided in RCW 75.25.030. [1979 1st ex.s. c 243 § 2.]

75.25.030 Licenses—Agent's fee—Rules. Razor-clamming licenses shall be issued by or under the authority of the director of fisheries. The director may authorize license dealers to issue the licenses and charge an agent's fee of not more than fifty cents in addition to the license fee.

The director shall adopt appropriate rules for the issuance of razor-clamming licenses and for the collection, payment, and handling of license fees and agent's fees. [1979 1st ex.s. c 243 § 3.]

75.25.040 License fees. (1) The fees for razor-clamming licenses are:

(a) For an annual resident license, two dollars and fifty cents; and

(b) For an annual nonresident license, ten dollars.

(2) Any person sixty-five years of age or older or under sixteen years of age shall be issued, upon making an affidavit to such effect and upon payment of the dealer fee established in RCW 75.25.030, a personal use razor clam license at no cost.

(3) For the purposes of this chapter, "resident" means a person who, for at least thirty days immediately preceding application for a license, has maintained a permanent place of abode within this state and has established, by formal evidence, an intent to continue residence within this state. All other persons are nonresidents.

(4) License fees received from the issuance of razor-clamming licenses shall be paid into the general fund and shall be subject to legislative appropriation until the cumulative total subject to legislative appropriation equals the appropriation under *section 11 of this act or so much of that appropriation as is actually used. Any excess over the amount appropriated or used shall be credited to the department of fisheries and shall be expended on the development or operation of programs beneficial to razor clam harvesting. [1979 1st ex.s. c 243 § 4.]

*Reviser's note: Section 11 of this act, chapter 243, Laws of 1979 1st ex.s., is an appropriation section and is not codified.

75.25.050 Licenses—Exhibiting—Enforcement.

(1) Razor-clamming licenses are nontransferable. A person digging for razor clams or having razor clams in his or her possession that are taken for personal use from the clam beds of this state shall, upon demand of any fisheries patrol officer, fisheries inspector, deputy fisheries inspector, game protector, or law enforcement officer within their respective jurisdictions, exhibit his or her license and write his or her name for the purpose of comparison with the signature on the license. Failure to exhibit the license or write the name upon demand shall be prima facie evidence that the person has no license or is not the person named on the license in the person's possession.

(2) The razor-clamming license shall be attached to an outer garment or be otherwise visible on the person of the licensee. [1979 1st ex.s. c 243 § 5.]

75.25.060 Penalty for violations. A person who violates RCW 75.25.020 or 75.25.050 or the rules adopted by the director under RCW 75.25.030 or who knowingly falsifies any information required for the issuance of a razor-clamming license is guilty of a misdemeanor and shall incur the penalties set forth in RCW 9A.20.020(3), as now or hereafter amended. [1979 1st ex.s. c 243 § 6.]

75.25.070 Annual report to the legislature. The department shall report annually prior to December 31 to the legislature on the number of licenses sold, revenues received, the results of the programs initiated under this chapter, and the status of the resource to enable the legislature to determine if the provisions of this chapter

have proved beneficial to the utilization and conservation of the resource. [1979 1st ex.s. c 243 § 7.]

75.25.900 Severability. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 1st ex.s. c 243 § 10.]

75.25.910 Effective date—1979 1st ex.s. c 243. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979. [1979 1st ex.s. c 243 § 9.]

Reviser's note: This act consists of RCW 75.25.010, 75.25.020, 75.25.030, 75.25.040, 75.25.050, 75.25.060, 75.25.070, 75.25.900 and 75.25.910.

Chapter 75.28 LICENSES

Sections

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75.28.010 License required—Penalty. It shall be unlawful for any person to engage in any phase of the commercial fishing industry or to operate any fishing gear known as or classified as commercial fishing gear by the director, or to fish for, take, deliver, or land any fish in the state, whether taken from waters within or without the jurisdiction of the state, without first obtaining and having in possession such licenses or delivery permits as are herein specified.

Any person violating any of the provisions of this chapter is guilty of a gross misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars. [1959 c 309 § 2; 1955 c 12 § 75.28.010. Prior: 1949 c 112 § 73; Rem. Supp. 1949 § 5780–511.]

75.28.012 Licensing districts—Created. The following licensing districts are hereby created:

(1) Puget Sound licensing district shall include those waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds and estuaries lying inside, easterly and southerly of the international boundary line and a line at the entrance to the Strait of Juan de Fuca projected northerly from Cape Flattery to Bonilla Point on Vancouver Island.

(2) Grays Harbor–Columbia river licensing district shall include those waters of Grays Harbor and tributary estuaries lying inside and easterly of a line projected northerly from Point Chehalis Light to Point Brown and those waters of the Columbia river and tributary sloughs and estuaries lying inside and easterly of a line at the entrance to the Columbia river projected southerly from the most westerly point of the North jetty to the most westerly point of the South jetty.

(3) Willapa Bay–Columbia river licensing district shall include those waters of Willapa Bay and tributary estuaries lying inside and easterly of a line projected northerly from Leadbetter Point to Cape Shoalwater Light and those waters of the Columbia river and tributary sloughs described in subsection (2). [1971 ex.s. c 283 § 2; 1957 c 171 § 1.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.013 Licensing districts—Separate licenses required in each district—Fees. Every owner of a commercial fishing vessel shall obtain an annual commercial salmon fishing license, for each licensing district, used in the lawful commercial taking of salmon therein. The fees for such commercial salmon fishing license shall be in the amounts as set forth in this chapter prescribed by the type of gear employed in the taking of food fish. The license fees for such fishing in one district

only shall be in the amounts as set forth in this chapter. Such license fees for such fishing in more than one district shall be, in each such additional district, the amounts required for fishing in one district only: *Provided*, That additional licenses shall not be required for fishing in more than one district for species of fish other than salmon. [1971 ex.s. c 283 § 3; 1959 c 309 § 3; 1957 c 171 § 2.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.014 Licensing districts—Application for licenses. Applications accompanied by the prescribed fees for the licenses required in RCW 75.28.013, as amended, shall be made in person, or postmarked not later than midnight of April 15th of the year in which the commercial salmon fishing license is to be effected. [1965 ex.s. c 57 § 1; 1959 c 309 § 4; 1957 c 171 § 3.]

75.28.020 Qualifications for license—Oregon licenses recognized in concurrent waters, conditions. No license provided for in this title shall be issued to any person who is not a citizen of the United States, or who is not a bona fide resident of the United States, or who is not of the age of sixteen years or over; nor shall any license be issued to any corporation unless it is authorized to do business in this state: *Provided*, That each license issued by the state of Oregon which is comparable and similar to a license provided for in this title shall be recognized as valid by this state in the concurrent waters of the Columbia River only if such license is valid within the jurisdiction of the issuing state, and if the state of Oregon recognizes as valid a comparable and similar license issued by this state. [1963 c 171 § 1; 1955 c 12 § 75.28.020. Prior: 1953 c 207 § 9; 1949 c 112 § 63; Rem. Supp. 1949 § 5780–501.]

75.28.030 Application for license. The director shall issue commercial fishing licenses and delivery permits herein required to any qualified person, upon the receipt of a lawful application therefor upon a blank to be furnished for that purpose, accompanied by the required fee. Applicants for delivery permits and all commercial fishing licenses shall indicate at the time of application the species of fish or shellfish that the applicants intend to take or catch and the type of gear they intend to use in the taking or catching of the fish or shellfish. [1959 c 309 § 7; 1955 c 12 § 75.28.030. Prior: 1953 c 207 § 2; 1949 c 112 § 65; Rem. Supp. 1949 § 5780–503.]

75.28.040 Expiration and renewal of licenses. All licenses shall expire at the close of the thirty-first day of December following their issuance, and shall be renewed annually thereafter upon application and payment of license fees required by this title. [1955 c 212 § 2; 1955 c 12 § 75.28.040. Prior: 1949 c 112 § 64; Rem. Supp. 1949 § 5780–502.]

75.28.050 Compensation fee to person issuing license.

Any person deputized by the director to issue fishing licenses may charge the sum of twenty-five cents in addition to collecting the fee prescribed by law, for issuing each such license, which shall be retained by him for his services. [1955 c 12 § 75.28.050. Prior: 1949 c 112 § 17; Rem. Supp. 1949 § 5780-216.]

75.28.060 Licenses transferable—Gear operated by nonresident.

All commercial fishing licenses provided for in this chapter shall be transferable. It shall be unlawful for any license to be operated or caused to be operated by any person other than the person listed as operator on the license. In the event gear is operated by a nonresident, the gear shall be licensed as nonresident gear. In the event a commercial license is transferred from a resident of the state of Washington to a nonresident the transferee shall be required to pay the difference between the fees for a resident and nonresident licensee. [1971 ex.s. c 283 § 4; 1965 ex.s. c 30 § 1; 1959 c 309 § 8; 1955 c 212 § 3; 1955 c 12 § 75.28.060. Prior: 1951 c 271 § 5; 1949 c 112 § 74, part; Rem. Supp. 1949 § 5780-512, part.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.070 Carrying or display of certain other licenses.

Fishing guide licenses, fish buyer licenses, and personal commercial fishing licenses shall be carried on the person of the licensee. Fish broker licenses, clam or oyster farm licenses, oyster reserve licenses, wholesale fish dealer licenses, retail fish dealer licenses, fish canning licenses, fish byproducts licenses, boat house operator licenses, and branch licenses shall be kept and displayed at the business premises of the licensee. [1955 c 12 § 75.28.070. Prior: 1949 c 112 § 74, part; Rem. Supp. 1949 § 5780-512, part.]

75.28.081 Personal commercial fishing license.

A personal commercial fishing license shall be obtained by each and every person who takes or assists in taking any salmon while on board a commercially licensed trolling vessel trolling for salmon in waters within the territorial boundaries of the state of Washington or who sells his commercial catch in the state of Washington.

A personal commercial fishing license shall be obtained by each and every person who takes or assists in taking Columbia river smelt (*T. pacificus*) under a Columbia river smelt license.

The fee for such license is ten dollars per annum.

The personal license shall be carried on the person whenever such person is engaged in the taking, landing, or selling of any salmon or Columbia river smelt. [1975-'76 2nd ex.s. c 40 § 2; 1971 ex.s. c 283 § 14.]

Effective date—1975-'76 2nd ex.s. c 40: See note following RCW 75.28.083.

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.083 Columbia river commercial smelt license—Fee.

A Columbia river smelt license shall be required for the commercial taking of Columbia river smelt (*T. pacificus*). The fee for such license shall be two hundred dollars per annum for residents and non-residents. The provisions of RCW 75.28.375 shall not apply to this section.

Any vessel holding a Columbia river smelt license may utilize any gear legal for the taking of smelt from the Columbia river and tributaries and shall not be required to obtain separate licenses for the use of such gear.

Applications accompanied by the prescribed fees for the commercial smelt license required herein shall be made in person or postmarked not later than midnight January 10 of the year in which the commercial smelt license is to be issued. [1975-'76 2nd ex.s. c 40 § 1.]

Effective date—1975-'76 2nd ex.s. c 40: "This 1976 amendatory act shall be effective January 1, 1977." [1975-'76 2nd ex.s. c 40 § 4.] This applies to the 1975-'76 2nd ex.s. amendment to RCW 75.28.081 and to RCW 75.28.083 and 75.28.377.

75.28.085 Delivery permit.

Every person, or persons or corporations operating a fishing vessel of any description used in the commercial taking or catching of food fish or shellfish, other than salmon, in offshore waters, and the transportation or possession of food fish or shellfish, other than salmon, through the waters of the state of Washington, and delivering the food fish or shellfish, other than salmon, in any port in the state of Washington shall as a condition of doing so, obtain a delivery permit from the director of fisheries. The fees for such permit shall be ten dollars: *Provided*, That any permittee under RCW 75.18.080 will not be required to obtain the above prescribed permit. Possessors of the above described permit who wish to gain a vessel delivery permit under RCW 75.18.080 as now or hereafter amended may upon application to the director of fisheries apply the ten dollar fee for the delivery permit against the cost of the vessel delivery permit set forth in RCW 75.18.080 as now or hereafter amended. [1971 ex.s. c 283 § 5; 1965 ex.s. c 73 § 1; 1959 c 309 § 5.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.087 Owner's commercial fishing license.

Every owner of a commercial fishing vessel shall obtain an annual commercial fishing license, not otherwise provided for in this chapter, for the taking of food fish and shellfish within the state of Washington: *Provided*, That holders of commercial salmon fishing licenses as set forth in this chapter may retain incidentally caught food fish other than salmon, and: *Provided, further*, That licensed oyster farmers, clam farmers, geoduck harvesters, and clam harvesters are not subject to this section. The fees for commercial fishing licenses required in this section shall be in the amounts set forth in this chapter prescribed by the type gear employed in the taking of food fish and shellfish. [1979 1st ex.s. c 141 § 2; 1971 ex.s. c 283 § 6; 1959 c 309 § 6.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.095 Charter boat license—Restrictions. Every owner of a vessel used as a charter boat from which only food fish other than salmon are taken for personal use shall obtain a yearly charter boat license for each vessel, and the fee for said license shall be one hundred dollars per annum. "Charter boat" means any vessel from which persons may, for a fee, angle for food fish, and which delivers food fish taken from waters either within or without the territorial boundaries of the state of Washington into state ports.

No vessel may engage in both charter or sports fishing and commercial fishing on the same day. A vessel may be licensed for both charter boat fishing and for commercial fishing at the same time: *Provided*, That the license and delivery permit allowing the activity not being engaged in shall be deposited with the fisheries patrol officer for that area or an agent designated by the director.

Nothing in this section shall be construed to mean that vessels not generally engaged in charter boat fishing, and under private lease or charter being operated by the lessee for the lessee's personal recreational enjoyment, shall be included under the provisions of this section. [1979 c 60 § 1; 1977 ex.s. c 327 § 5; 1971 ex.s. c 283 § 15; 1969 c 90 § 1.]

Severability—1979 c 60: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 60 § 4.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.097 Charter boat license, salmon—Exception, guides. Every owner of a vessel used as a charter boat from which salmon and other food fish are taken for personal use shall obtain a yearly charter boat license for each such vessel, whether resident or nonresident, and the fee for the license shall be two hundred dollars per annum. However, vessels used by guides for clients seeking salmon for personal use in freshwater rivers, streams, and lakes, other than Lake Washington or that part of the Columbia river below the bridge at Longview, are not charter boats under this section or RCW 75.28.095. [1979 c 60 § 2.]

Severability—1979 c 60: See note following RCW 75.28.095.

75.28.100 Commercial fishing license, delivery permit—Application, certificate of registration and plates—Transfer—Fees—Loss of plates. Each annual application for a commercial fishing license or a delivery permit provided for in this chapter shall contain the name and address of the owner of the vessel, the name and address of the operator of the vessel, the name and number of the vessel, a description of the vessel and fishing gear to be carried thereon, and such information as may be required by the department.

At the time of issuance of such licenses or delivery permit the director shall furnish each applicant with a certificate of registration and two license plates with the registration number stamped thereon. Such registration shall be known as the "State of Washington license and registration number" and shall be transferable. The registration certificate shall be carried aboard the vessel at all times and the license plates shall be affixed and carried in plain sight on each side of the vessel well forward.

The license or delivery permit provided for herein shall be invalid in the event the vessel is operated by anyone other than the operator listed in the application. In the event of change of name, ownership or operator of the vessel, the director shall be notified in writing and will issue a new certificate of registration which will effect a change of name or ownership or operator, as the case may be. A fee of ten dollars shall be charged for the new certificate of registration.

Registrants shall report immediately any change of name, ownership, or operator of the vessel. Defaced, mutilated, or lost license plates shall be replaced immediately and a fee of two dollars shall be charged for such new plates. [1959 c 309 § 9; 1955 c 12 § 75.28.100. Prior: 1951 c 271 § 8; 1949 c 112 § 68; Rem. Supp. 1949 § 5780-506.]

75.28.110 Hand line or jig line license. The fee for all licenses prescribed in this chapter employing hand lines or jig lines in the taking of fish and shellfish shall be twenty-seven dollars and fifty cents per annum for residents and fifty-five dollars per annum for nonresidents. Each license shall entitle the licensee to use three hooks only. [1965 ex.s. c 73 § 2; 1959 c 309 § 10; 1955 c 12 § 75.28.110. Prior: 1951 c 271 § 9; 1949 c 112 § 69(1); Rem. Supp. 1949 § 5780-507(1).]

75.28.120 Set line license. The fee for all licenses prescribed in this chapter employing set lines in the taking of fish and shellfish shall be thirty-five dollars per annum for residents and seventy dollars per annum for nonresidents. Each license shall entitle the licensee to use no more than three set lines of not more than five hundred hooks to each set line. [1965 ex.s. c 73 § 3; 1959 c 309 § 11; 1955 c 12 § 75.28.120. Prior: 1951 c 271 § 10; 1949 c 112 § 69(2); Rem. Supp. 1949 § 5780-507(2).]

75.28.130 Troll line license. The fee for all licenses prescribed in this chapter employing troll lines in the taking of salmon shall be two hundred dollars per annum. Each license shall entitle the licensee to use six or less troll lines.

The fee for all licenses prescribed in this chapter employing troll lines in the taking of food fish, other than salmon, shall be twenty-seven dollars and fifty cents per annum. Each license shall entitle the licensee to use six or less troll lines. [1977 ex.s. c 327 § 6; 1971 ex.s. c 283 § 7; 1965 ex.s. c 73 § 4; 1959 c 309 § 12; 1955 c 12 § 75.28.130. Prior: 1951 c 271 § 11; 1949 c 112 § 69(3); Rem. Supp. 1949 § 5780-507(3).]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.140 Gill net license. The fee for all licenses prescribed in this chapter employing gill nets in the taking of food fish shall be two hundred dollars per annum.

A valid Grays Harbor–Columbia river or Willapa Harbor–Columbia river commercial salmon fishing gill net license shall also be valid when lawfully fishing for sturgeon, smelt and shad in the licensing district for which said license is issued. [1977 ex.s. c 327 § 7; 1971 ex.s. c 283 § 8; 1965 ex.s. c 73 § 5; 1959 c 309 § 13; 1955 c 12 § 75.28.140. Prior: 1951 c 271 § 12; 1949 c 112 § 69(4); Rem. Supp. 1949 § 5780–507(4).]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.150 Set net license. The fee for all licenses prescribed in this chapter employing set nets in the taking of fish and shellfish shall be thirty-five dollars per annum for residents and seventy dollars per annum for nonresidents. [1965 ex.s. c 73 § 6; 1959 c 309 § 14; 1955 c 12 § 75.28.150. Prior: 1951 c 271 § 13; 1949 c 112 § 69(5); Rem. Supp. 1949 § 5780–507(5).]

75.28.160 Dip bag net license. The fee for all licenses prescribed in this chapter employing dip bag nets in the taking of fish and shellfish shall be twenty-seven dollars and fifty cents per annum for residents and fifty-five dollars per annum for nonresidents. [1965 ex.s. c 73 § 7; 1959 c 309 § 15; 1955 c 12 § 75.28.160. Prior: 1951 c 271 § 14; 1949 c 112 § 69(6); Rem. Supp. 1949 § 5780–507(6).]

75.28.170 Drag seine license. The fee for all licenses prescribed in this chapter employing drag seines in the taking of fish and shellfish shall be forty-five dollars per annum for residents and seventy dollars per annum for nonresidents. [1965 ex.s. c 73 § 8; 1959 c 309 § 16; 1955 c 12 § 75.28.170. Prior: 1951 c 271 § 15; 1949 c 112 § 69(7); Rem. Supp. 1949 § 5780–507(7).]

75.28.180 Lampara net license. The fee for all licenses prescribed in this chapter employing lampara nets in the taking of fish and shellfish shall be fifty-seven dollars and fifty cents per annum for residents and one hundred fifteen dollars per annum for nonresidents. [1965 ex.s. c 73 § 9; 1959 c 309 § 17; 1955 c 12 § 75.28.180. Prior: 1951 c 271 § 16; 1949 c 112 § 69(8); Rem. Supp. 1949 § 5780–507(8).]

75.28.190 Purse seine (drum, table, power block) license. The fee for all licenses prescribed in this chapter employing purse seines (drum seines, table seines, power block seines) in the taking of food fish shall be three hundred dollars per annum. [1977 ex.s. c 327 § 8; 1971 ex.s. c 283 § 9; 1965 ex.s. c 73 § 10; 1959 c 309 § 18;

1955 c 12 § 75.28.190. Prior: 1951 c 271 § 17; 1949 c 112 § 69(9); Rem. Supp. 1949 § 5780–507(9).]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.210 Otter trawl, beam trawl, shrimp trawl license. The fee for all licenses prescribed in this chapter employing otter trawls, beam trawls or shrimp trawls in the taking of fish or shellfish shall be eighty-seven dollars and fifty cents per annum for residents and one hundred thirty-five dollars per annum for nonresidents. [1965 ex.s. c 73 § 11; 1959 c 309 § 19; 1955 c 12 § 75.28.210. Prior: 1951 c 271 § 19; 1949 c 112 § 69(11); Rem. Supp. 1949 § 5780–507(11).]

75.28.220 Reef net license. The fee for all licenses prescribed in this chapter employing reef nets in the taking of food fish shall be two hundred dollars per annum. [1977 ex.s. c 327 § 9; 1971 ex.s. c 283 § 10; 1965 ex.s. c 73 § 12; 1959 c 309 § 20; 1955 c 12 § 75.28.220. Prior: 1951 c 271 § 20; 1949 c 112 § 69(12); Rem. Supp. 1949 § 5780–507(12).]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

Effective dates—1971 ex.s. c 283: See note following RCW 75.18.080.

Certain license fees double for nonresidents: RCW 75.28.375.

75.28.230 Fyke net license. The fee for all licenses prescribed in this chapter employing fyke nets in the taking of fish and shellfish shall be twenty-five dollars per annum for residents and forty dollars per annum for nonresidents. [1965 ex.s. c 73 § 13; 1959 c 309 § 21; 1955 c 12 § 75.28.230. Prior: 1951 c 271 § 21; 1949 c 112 § 69(13); Rem. Supp. 1949 § 5780–507(13).]

75.28.240 Brush weir license. The fee for all licenses prescribed in this chapter employing brush weirs in the taking of fish and shellfish shall be eighty-five dollars per annum for residents and one hundred and sixty dollars per annum for nonresidents. [1965 ex.s. c 73 § 14; 1959 c 309 § 22; 1955 c 12 § 75.28.240. Prior: 1951 c 271 § 22; 1949 c 112 § 69(14); Rem. Supp. 1949 § 5780–507(14).]

75.28.250 Ring net license. The fee for all licenses prescribed in this chapter employing ring nets in the taking of fish and shellfish shall be twenty-seven dollars and fifty cents per annum for residents and forty-five dollars per annum for nonresidents. [1965 ex.s. c 73 § 15; 1959 c 309 § 23; 1955 c 12 § 75.28.250. Prior: 1951 c 271 § 23; 1949 c 112 § 69(15); Rem. Supp. 1949 § 5780–507(15).]

75.28.255 Carp license. A license is required for the taking or catching of carp for commercial purposes with any gear authorized by the director in the waters of the state, for which license there shall be paid a fee of five dollars. [1955 c 212 § 5.]

75.28.260 Bottom fish or devil fish pots license. The fee for all licenses prescribed in this chapter employing bottom fish or devil fish pots in the taking of fish or shellfish shall be thirty-five dollars per annum for residents and sixty dollars per annum for nonresidents. For each bottom fish pot in excess of one hundred there shall be paid an additional fee of twenty-five cents per annum by residents and fifty cents per annum by nonresidents. [1965 ex.s. c 73 § 16; 1959 c 309 § 24; 1955 c 12 § 75.28.260. Prior: 1951 c 271 § 24; 1949 c 112 § 69(16); Rem. Supp. 1949 § 5780-507(16).]

75.28.270 Shellfish pots license. The fee for all licenses prescribed in this chapter employing shellfish pots in the taking of fish and shellfish shall be thirty-five dollars per annum for residents and sixty dollars per annum for nonresidents. For each shellfish pot in excess of one hundred there shall be paid an additional fee of twenty-five cents per annum by residents and fifty cents per annum by nonresidents. [1965 ex.s. c 73 § 17; 1959 c 309 § 25; 1955 c 12 § 75.28.270. Prior: 1951 c 271 § 25; 1949 c 112 § 69(17); Rem. Supp. 1949 § 5780-507(17).]

75.28.280 Clam farm license—Exception, geoducks. A license is required for each and every clam farm of one or more tracts of land being operated for commercial purposes on privately owned or leased tidelands and on leased beds of navigable waters in the state, except that a license under this section is not required for subtidal geoduck harvest tracts for which the required harvest rights and licenses have been obtained pursuant to other provisions of law. The fee for said license is fifteen dollars per annum, and shall be paid for each and every year in which clams are removed from the clam farm for purposes of sale. A separate license is required for each clam farm being operated within each of the following clam districts; northern Puget Sound district, southern Puget Sound district, Grays Harbor district, and Willapa Harbor district; said districts are to include the waters, beds, shores, beaches, and tidelands of, northern Puget Sound, southern Puget Sound, Grays Harbor, and Willapa Harbor, respectively, as geographically defined by the director of fisheries under appropriate regulations. [1979 1st ex.s. c 141 § 3; 1969 ex.s. c 253 § 3; 1955 c 212 § 8; 1955 c 12 § 75.28.280. Prior: 1951 c 271 § 26; 1949 c 112 § 70; Rem. Supp. 1949 § 5780-508.]

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

75.28.281 Oyster farm license. A license is required for each and every oyster farm being operated for commercial purposes on privately owned or leased tidelands and on leased beds of navigable waters in the state. The fee for said license is fifteen dollars per annum, and shall be paid for each and every year in which oysters are removed from the oyster farm for purposes of sale as seed stock or otherwise. A separate license is required for each oyster farm being operated within each of the following oyster districts: northern Puget Sound district, southern Puget Sound district, Grays Harbor district,

and Willapa Harbor district; said districts are to include the waters, beds, shores, beaches, and tidelands of, northern Puget Sound, southern Puget Sound, Grays Harbor, and Willapa Harbor, respectively, as geographically defined by the director of fisheries under appropriate regulations. [1969 ex.s. c 253 § 2; 1955 c 212 § 9.]

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

75.28.282 Clam farm license, oyster farm license—Who must obtain. A clam farm license or an oyster farm license or both as provided in RCW 75.28.280 and 75.28.281 shall be required of:

(1) Any person or company owning and operating an oyster farm or clam farm or both;

(2) Any lessee operating an oyster farm or clam farm or both, except when the owner thereof comes within the provisions of subsection (3) of this section;

(3) Any person or company owning an oyster farm or a clam farm or both, operated by a lessee or another, which owner handles, processes, sells, or otherwise deals in the oysters or clams or both produced thereon, which are received by the owner as total or partial consideration for the use of the oyster or clam farm or both. [1955 c 212 § 10.]

75.28.283 Geoducks or clams—Licenses for harvesting. It is unlawful for any person to harvest clams or geoducks or to utilize any vessel with commercial hand held geoduck harvesting gear on any aquatic lands designated under RCW 75.28.286 without first obtaining the licenses required by RCW 75.24.100 as now or hereafter amended and 75.28.287 as now or hereafter amended. Use or the mere presence of the gear in the water outside the licensed tract is prima facie evidence of a violation of this section. [1979 1st ex.s. c 141 § 6.]

75.28.285 Clam digger's license—Unlawful to dig hard shell clams for commercial purposes. A clam digger's license shall be required of any person digging clams for commercial purposes from the waters or beaches of this state, and the fee for such license shall be five dollars per season, as defined by the director of fisheries, for razor clams: *Provided*, That such license shall not be required for licensed clam farmers or their agents or employees who dig only on licensed clam farms.

It shall be unlawful for any person to dig hard shell clams for commercial purposes from the waters or beaches of this state: *Provided*, That it shall be lawful to dig hard shell clams for commercial purposes on licensed clam farms. [1965 ex.s. c 27 § 1; 1955 c 12 § 75.28.285. Prior: 1951 c 271 § 44.]

75.28.286 Geoducks—Designating state aquatic lands for harvesting. The department of natural resources shall designate the areas of aquatic lands owned by the state of Washington which will be available for geoduck harvesting by licensed geoduck harvesters in accordance with RCW 79.01.124. [1979 1st ex.s. c 141 § 5.]

75.28.287 Tract license for harvesting geoducks—Diver's license—License for mechanical and/or hydraulic device used taking clams—Displaying licenses. (1) A geoduck tract license is required for each subtidal geoduck tract for which harvest rights have been granted by the department of natural resources for the commercial harvest of geoducks. The fee is one hundred dollars per annum.

(2) Every diver engaged in the commercial harvest of geoduck or other clams shall obtain a nonassignable personal commercial fishing license. The fee is fifty dollars per annum.

(3) A license is required for each and every mechanical and/or hydraulic device operated for the purpose of taking clams other than geoduck clams for commercial purposes from tidelands and beds of navigable waters of the state of Washington, the fee for which license shall be three hundred dollars per annum.

Evidence of issuance of the licenses required by this section shall be prominently displayed by numbers, codes, or symbols upon the vessel used in geoduck or clam harvesting activities before engaging in the harvesting activities in a manner prescribed by the director of fisheries in rules promulgated under chapter 34.04 RCW. [1979 1st ex.s. c 141 § 4; 1969 ex.s. c 253 § 4.]

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

Geoduck clams, harvesting for commercial purposes—License: RCW 75.24.100.

75.28.288 Geoduck harvesting—Penalties for violations. (1) In addition to the penalties prescribed in RCW 75.08.260 and 75.28.380, the director of fisheries may revoke all geoduck personal commercial fishing licenses or geoduck tract licenses or both held by a person if within any five-year period after May 8, 1979:

(a) That person is convicted or has an unvacated bail forfeiture for two or more violations of the geoduck licensing or harvesting provisions of this title; or

(b) The department of fisheries receives a report from the department of natural resources of two or more violations by the person of the lease or harvesting agreement under chapters 79.01 or 79.20 RCW where the department of natural resources suspended or canceled the lease or harvesting agreement under RCW 79.01.570.

The director of fisheries shall not issue any geoduck personal commercial fishing license or geoduck tract license for a period of one year after the revocation to a person who has had a license revoked under this section except as provided under subsection (3) of this section.

(2) If, within any five-year period after May 8, 1979, any holder of a tract license permits any person to harvest geoducks on that tract, each violation by that person of the geoduck licensing or harvesting provisions of this title resulting in: (a) Either conviction or unvacated forfeiture of bail; or (b) a suspension or cancellation of the lease or harvesting agreement by the department of natural resources under RCW 79.01.570; shall be imputed to the holder of a tract license for the purpose of computing the number of the tract holder's violations under subsection (1) of this section.

(3) Appeals from revocations under this section shall be taken pursuant to the judicial review provisions of chapter 34.04 RCW. If the revocation of a license is determined to be invalid, the department of fisheries shall reissue a license or licenses to that person. [1979 1st ex.s. c 141 § 7.]

75.28.290 Oyster reserve license. An oyster reserve license is required of any person taking shellfish for commercial purposes from the reserves of this state. The fee for such license is fifteen dollars per annum. [1969 ex.s. c 91 § 2; 1955 c 12 § 75.28.290. Prior: 1951 c 271 § 27; 1949 c 112 § 71; Rem. Supp. 1949 § 5780-509.]

75.28.300 Wholesale fish dealer's license. A wholesale fish dealer's license is required for:

(1) Any business in the state engaged in the freezing, salting, smoking, kippering, preserving in ice or any processing or curing of any food fish or shellfish, or the shucking or cleaning of shellfish for commercial purposes.

(2) Any business in the state engaged in the wholesale selling, buying or brokering of food fish or shellfish except those businesses which buy exclusively from Washington licensed wholesale dealers and sell solely at retail.

(3) Any fisherman or clam or oyster farmer who lands his catch or his shellfish harvest in the state of Washington and sells his catch or his shellfish harvest to anyone other than a licensed wholesale dealer within or outside the state of Washington.

(4) Any business in the state engaged in the canning of food fish or shellfish, for commercial purposes, in hermetically sealed containers which are processed by exposure to heat for pasteurization or sterilization.

(5) Any person or business engaged in custom canning shellfish or food fish taken by others for their personal use. The words "personal use only—not for sale" shall be embossed in a permanent and legible manner on the lid or cover of each can or container used in canning or preserving fish or shellfish caught for personal use. It is unlawful to commingle fish or shellfish caught for personal use with commercially caught fish or shellfish at any time prior to or during the canning or processing.

(6) Any business in the state engaged in the manufacture or preparation for commercial purposes of fertilizer, oil, meal, caviar, fish bait, or other byproducts from fish or shellfish.

The fee for the license is thirty-seven dollars and fifty cents per annum. This section shall not apply to persons buying or selling oyster seed for transplant. [1979 c 66 § 1; 1965 ex.s. c 28 § 1; 1955 c 212 § 11; 1955 c 12 § 75.28.300. Prior: 1951 c 271 § 28; 1949 c 112 § 72(1); Rem. Supp. 1949 § 5780-510(1).]

75.28.350 Fish buyer's license. A fish buyer's license shall be obtained by every wholesaler, canner, byproducts manufacturer, or broker for each and every fish buyer engaged as a representative in the state for such wholesaler, canner, byproducts manufacturer or broker, and the fee for said license is seven dollars and fifty cents per annum.

The term "fish buyer" as used in this section means a buyer who purchases at a place or places other than his employer's business premises, and who buys for only one person. In the event the buyer buys for two or more persons, he shall be deemed a wholesale fish dealer and shall be required to be licensed as such. [1965 ex.s. c 29 § 1; 1955 c 12 § 75.28.350. Prior: 1951 c 271 § 31; 1949 c 112 § 72(6); Rem. Supp. 1949 § 5780-510(6).]

75.28.370 Branch plant license. A branch license is required for each branch plant in the state of any wholesale, canning, or byproducts manufacturing business enterprise having more than one place of business. One such place shall be designated as headquarters and said license shall be obtained for each and every other place of business or branch plant. The fee for said license is seven dollars and fifty cents per annum. [1979 c 66 § 2; 1955 c 12 § 75.28.370. Prior: 1953 c 207 § 15; 1951 c 271 § 33; 1949 c 112 § 72(8); Rem. Supp. 1949 § 5780-510(8).]

75.28.375 Certain license fees double for nonresidents. The fees for all licenses prescribed in *this act shall be double for nonresidents of the state. [1971 ex.s. c 283 § 12.]

***Reviser's note:** "this act" [1971 ex.s. c 283] consists of this section and RCW 75.28.081, and to the 1971 amendments to RCW 75.12.010, 75.18.080, 75.28.012, 75.28.013, 75.28.060, 75.28.085, 75.28.087, 75.28.095, 75.28.130, 75.28.140, 75.28.190 and 75.28.220.

75.28.377 Nonresident applicants and certain wholesale dealer licensees—Surety or property bond or deposit may be required. (1) In addition to license fees required to accompany license applications for wholesale dealers licenses, the director may require certain applicants, as specified in this section, to file a surety bond in the amount of two thousand dollars, issued by a surety insurer who meets the requirements of chapter 48.28 RCW in a form acceptable to the director running to the state of Washington, guaranteeing the payment of catch and privilege fees. Such bond shall be required of any applicant from outside the state of Washington and any applicant who has not held a Washington wholesale dealers license for the preceding three years.

(2) In lieu of the surety bond that may be required under subsection (1) of this section, the applicant may file with the director a property bond, or a deposit, consisting of cash or other security acceptable to the department, equal to the amount of the surety bond. The director shall file all such deposits with the state treasurer until such time as they are returned or applied to outstanding fees. [1975-'76 2nd ex.s. c 40 § 3.]

Effective date—1975-'76 2nd ex.s. c 40: See note following RCW 75.28.083.

75.28.380 Forfeiture of license for violations. Upon conviction of any person of a violation of any provision of this title, or rule or regulation of the director, the judge or justice of the peace may, in addition to the penalty imposed by law, forfeit the license of such person: *Provided*, That upon conviction of any person of a violation of any statute or regulation prescribing the

length, depth or construction of fishing gear, or upon subsequent conviction in any five-year period of any person of any violation of any other provisions of this title or rule or regulation of the director, the forfeiture of such license shall be mandatory, and the license shall remain forfeited pending any appeal. The director may prohibit the issuance of a license to any person convicted two or more times of any such violation in any five-year period or prescribe the conditions under which the license may be issued. [1979 1st ex.s. c 99 § 2; 1957 c 171 § 5; 1955 c 12 § 75.28.380. Prior: 1949 c 112 § 77; Rem. Supp. 1949 § 5780-603.]

75.28.384 Salmon licenses—Suspension for repeated violations. The director, subject to the provisions of chapter 34.04 RCW as now or hereafter amended, shall deny all salmon fishing privileges and shall suspend all salmon fishing licenses for a period of one year held by any person who is convicted of two or more violations of salmon fishing regulations or rules promulgated under this title which restrict fishing times or areas, in any five-year period beginning after *the effective date of this 1979 act. A person may not avoid the provisions of this section by transferring a commercial salmon fishing license.

For the purposes of this section, the term "conviction" means a final conviction in either a state or municipal court. An unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this title is equivalent to a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended. [1979 1st ex.s. c 99 § 3.]

***Reviser's note:** The effective date of this 1979 act [1979 1st ex.s. c 99] was September 1, 1979.

75.28.390 Commercial herring fishing—Legislative finding. The legislature finds that a significant commercial herring fishing industry is presently developing in the state of Washington under the careful guidance of the department of fisheries. The legislature further finds that the stocks of herring within the waters of this state are limited in extent and are in need of strict preservation. [1973 1st ex.s. c 173 § 1.]

75.28.400 Commercial herring fishing—Additional finding—Purpose. In addition, the legislature finds that the number of commercial fishermen engaged in fishing for herring has steadily increased. This factor, combined with advances made in fishing and marketing techniques, has resulted in strong pressures on the supply of herring, unnecessary waste in one of Washington's valuable resources, and economic loss to the citizens of this state. Therefore, it is the purpose of RCW 75.28.390 through 75.28.430 to establish reasonable procedures for controlling the extent of commercial herring fishing. [1973 1st ex.s. c 173 § 2.]

75.28.410 Commercial herring fishing—Validation of licenses required. After April 25, 1973, only those persons who have obtained a validated license to fish for

herring issued by the department of fisheries of the state of Washington shall engage in the commercial taking or catching of herring. Licenses issued under this section shall be valid for one year, from January 1 through December 31. Any food fish license as stipulated in chapter 75.28 RCW intended for use in fishing for herring in the Puget Sound district must be validated for these species by the department of fisheries after proving compliance with the provisions of RCW 75.28.420. [1973 1st ex.s. c 173 § 3.]

75.28.420 Commercial herring fishing—Validated licenses—Limitation—Required—Additional licenses. For the 1973 season and subsequent seasons, the department shall limit the number of licenses validated under RCW 75.28.410 to those individuals who held valid commercial fishing licenses and can prove that they landed herring as documented by a Washington department of fisheries landing ticket for that type of fishing gear during the period (1) January 1, 1971, through April 15, 1973, or (2) January 1, 1969, through December 31, 1970, for only those individuals who were in the armed services of the United States during the period January 1, 1971, through April 1, 1973. The validated herring license shall be required for commercial herring fishing in Puget Sound as set forth in the Washington Administrative Code under section 220-16-210. Additional licenses may be granted after the 1976 season by the department only upon a showing that the stocks of herring will not be jeopardized by the granting of such additional licenses. The individual validation to fish for herring shall be fully transferable. [1974 ex.s. c 104 § 1; 1973 1st ex.s. c 173 § 4.]

75.28.430 Commercial herring fishing—Elimination of units as alternative measure. If subsequent court action requires that additional validated licenses must be permitted for the 1973 season and if such increases in a particular gear result in placing an excessive strain on herring stocks, the department shall reduce the number of validated licenses for such gear by eliminating units with the shortest history of landings as established and documented by Washington department of fisheries' landing tickets for the herring fishery. If two or more units have a similar history of landings, then such reduction for those vessels shall be by lot. [1973 1st ex.s. c 173 § 5.]

75.28.440 Commercial herring fishing—Advisory committee—Hardship cases. On and after February 16, 1974 the director of the department of fisheries shall appoint three persons broadly representative of the commercial herring fishery to function as an advisory committee to the department for the purpose of defining hardship cases as such cases relate to denials of commercial herring licenses under this chapter. The committee shall hold meetings and hearings and take such testimony as it deems necessary to carry out the duty imposed on it by this section. Upon making its final decision on the meaning of a hardship case and communicating the same in writing to the director the committee

shall be dissolved. The director, upon receipt of the committee's findings, may promulgate the committee's definition of a hardship case as a rule and regulation of the department after complying with the provisions of chapter 34.04 RCW, the administrative procedure act. [1974 ex.s. c 104 § 2.]

75.28.450 Limitation upon salmon licenses and delivery permits—Intention. The legislature finds that the protection, welfare, and economic good of the commercial salmon fishing industry is of paramount importance to the people of this state. Scientific advancement has increased the efficiency of salmon fishing gear. There presently exists an overabundance of commercial salmon fishing gear in our state waters which causes great pressure on the salmon fishery resource. This situation results in great economic waste to the state and prohibits conservation programs from achieving their goals. The public welfare requires that the number of commercial salmon fishing licenses and vessel delivery permits issued by the state be limited to insure that sound conservation programs can be scientifically carried out. It is the intention of the legislature to preserve this valuable natural resource so that our food supplies from such resource can continue to meet the ever increasing demands placed on it by the people of this state. [1974 ex.s. c 184 § 1.]

Severability—1974 ex.s. c 184: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 184 § 11.]

75.28.455 Limitation upon salmon licenses and delivery permits—Program to limit commercial salmon vessels—Qualifications for licensing. On and after May 6, 1974, the department of fisheries of the state of Washington shall initiate a program to limit the number of commercial salmon vessels for each type of fishing gear and area.

(1) Except for vessels coming under the provisions of RCW 75.28.460, no commercial salmon fishing license or vessel delivery permit shall be issued to a vessel unless that vessel (a) was issued or had transferred to it a valid Washington state commercial salmon fishing license or vessel delivery permit during the previous calendar year, or during the last calendar year in which the vessel was legally eligible for licenses if the vessel's licenses were suspended or revoked during the calendar year or years previous to the year for which the licenses are being sought; (b) has not subsequently transferred the license or permit to another vessel; and (c) can prove by means of a valid fish receiving document that food fish were caught and landed by such vessel in this state or in another state during the previous calendar year, or during the last calendar year in which the vessel was legally eligible for licenses if the vessel's licenses were suspended or revoked during the calendar year or years previous to the year for which the licenses are being sought.

(2) The director may waive the landing requirement of subsection (1)(c) of this section if (a) the vessel to which an otherwise valid license is transferred has not had the opportunity to have caught and landed salmon

and (b) the intent of the commercial salmon vessel limitation program established under this section is not violated.

Nothing in this section shall be construed to be contrary to the provisions of Title 75 RCW or any regulation promulgated thereunder.

All such licenses or vessel delivery permits shall be transferable. [1979 c 135 § 1; 1977 ex.s. c 230 § 1; 1977 ex.s. c 106 § 7; 1974 ex.s. c 184 § 2.]

Severability—1977 ex.s. c 106: See note following RCW 75.30.010.

Severability—1974 ex.s. c 184: See note following RCW 75.28.450.

75.28.460 Limitation upon salmon licenses and delivery permits—Salmon caught outside state waters—Single delivery permit—Fee. Any commercial salmon fishing vessel not qualified for a commercial salmon fishing license or vessel delivery permit under RCW 75.28.455 and wishing to land salmon caught outside the territorial waters of the state of Washington shall be able to obtain a single delivery vessel delivery permit. The fee for such permit shall be one hundred dollars. [1977 ex.s. c 327 § 4; 1974 ex.s. c 184 § 3.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

Severability—1974 ex.s. c 184: See note following RCW 75.28.450.

75.28.465 Limitation upon salmon licenses and delivery permits—Vessels under construction. In addition to the commercial salmon fishing licenses and vessel delivery permits issued pursuant to RCW 75.28.455 the department shall issue the required license to any commercial fishing vessel which is under construction or purchased in good faith between April 16, 1973, and May 6, 1974. [1974 ex.s. c 184 § 4.]

Severability—1974 ex.s. c 184: See note following RCW 75.28.450.

75.28.470 Limitation upon salmon licenses and delivery permits—Licensing of charter fishing vessels. Charter fishing vessels may be licensed for commercial trolling during the salmon trolling season if the director finds that the charter industry in this state is suffering economic hardship due to a national or state fuel crisis. [1974 ex.s. c 184 § 6.]

Severability—1974 ex.s. c 184: See note following RCW 75.28.450.

75.28.475 Limitation upon salmon licenses and delivery permits—Advisory boards of review—Travel expenses. The director shall appoint three man advisory boards of review to hear cases as provided for in RCW 75.28.480. The members of such a review board shall be from the commercial salmon fishing industry, shall serve without pay, and shall serve at the discretion of the director of the department of fisheries. The members of such a review board shall be reimbursed for travel expenses pursuant to RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day or major portion thereof spent in the performance of their duty.

The director shall promulgate regulations concerning the operation of such review boards in accordance with chapter 34.04 RCW. [1975-'76 2nd ex.s. c 34 § 171; 1974 ex.s. c 184 § 7.]

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

Severability—1974 ex.s. c 184: See note following RCW 75.28.450.

75.28.480 Limitation upon salmon licenses and delivery permits—Appeal to board of review—Hearing—Procedure. Any person aggrieved by a decision of the department pursuant to RCW 75.28.455 through 75.28.475 may voluntarily request that a board of review be impaneled to hear his case. Such a hearing before a board shall be informal and the rules of evidence shall not be applicable to the proceedings and a record shall be kept thereof as provided by chapter 34.04 RCW. After the presentation of a case such a review board shall inform in writing both the director and the initiating party of whether or not the board agrees or disagrees with the department's decision and the reasons for such agreement or disagreement. Upon receipt of the board's findings the director, at his discretion, may either uphold or reverse the department's action.

Nothing in this section shall be construed: (1) to impair an aggrieved person's right to proceed under chapter 34.04 RCW; or (2) to impose any liability on members of a review board for their actions pursuant to this section. [1974 ex.s. c 184 § 9.]

Severability—1974 ex.s. c 184: See note following RCW 75.28.450.

75.28.500 Program to purchase fishing vessels, gear, licenses and permits—Finding and intent. The legislature finds that the protection, welfare, and economic well-being of the commercial fishing industry is important to the people of this state. There presently exists an overabundance of commercial fishing gear in our state waters which causes great pressure on the fishing resources. This results in great economic waste to the state and prohibits conservation and harvesting programs from achieving their goals. This adverse situation has been compounded by the federal court decisions, *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for the Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976). As a result, large numbers of commercial fishermen face personal economic hardship, and the state commercial fishing industry is confronted with economic difficulty. The public welfare requires that the state have the authority to purchase commercial fishing vessels, licenses, gear, and permits offered for sale, as appropriate, in a manner which will provide relief to the individual vessel owner, and which will effect a reduction in the amount of commercial fishing gear in use in the state so as to insure increased economic opportunity for those persons in the industry and to insure that sound scientific conservation and harvesting programs can be

carried out. It is the intention of the legislature to provide relief to commercial fishermen adversely affected by the current economic situation in the state fishery and to preserve this valuable state industry and these natural resources. [1977 ex.s. c 230 § 2; 1975 1st ex.s. c 183 § 2.]

Loan assistance program for commercial fishermen: Chapter 75.44 RCW.

75.28.505 Program to purchase fishing vessels, gear, licenses and permits—Definitions. As used in RCW 75.28.500 through 75.28.540, unless the context indicates otherwise:

(1) "Case areas" means those areas of the Western district of Washington and in the adjacent offshore waters which are within the jurisdiction of the state of Washington, as defined in *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974, and in *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976), or any area in which fishing rights are affected by court decision in a manner consistent with the above-mentioned decisions;

(2) "Department" means the department of fisheries;

(3) "Director" means the director of the department of fisheries. [1977 ex.s. c 230 § 3; 1975 1st ex.s. c 183 § 3.]

75.28.510 Program to purchase fishing vessels, gear, licenses and permits—Authorized. The department is authorized to purchase commercial fishing vessels and appurtenant gear, and the current commercial fishing licenses and delivery permits and charter boat licenses issued by the state of Washington if the vessel, licensee, or permit holder:

(1) Was licensed to fish or deliver fish during 1974, 1975, 1976, or 1977 within the case areas; and

(2) Was substantially restricted in its fishing as a result of compliance with *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976).

The department shall not purchase any vessel without also purchasing all current Washington commercial fishing licenses and delivery permits and charter boat licenses issued to such vessel or its owner: *Provided*, That the department is authorized to purchase current licenses and delivery permits in the absence of the purchase of a vessel. [1979 1st ex.s. c 43 § 1; 1977 ex.s. c 230 § 4; 1975 1st ex.s. c 183 § 4.]

75.28.515 Program to purchase fishing vessels, gear, licenses and permits—Valuation—Maximum price—Retirement of licenses and permits. The purchase by the department of a vessel and appurtenant gear shall be based on a survey conducted by a qualified marine surveyor. A license or delivery permit shall be valued separately by the department.

The director may specify a maximum price to be paid by the department for any vessel, gear, license or delivery permit purchased pursuant to RCW 75.28.510. Any license or delivery permit so purchased shall be permanently retired by the department. [1975 1st ex.s. c 183 § 5.]

75.28.520 Program to purchase fishing vessels, gear, licenses and permits—Disposition of vessels and gear—Prohibition against using purchased vessels for fishing purposes. The department may arrange for the insurance and storage and for the resale or other disposition of all vessels and gear purchased pursuant to RCW 75.28.500 through 75.28.540. Such vessels shall not be resold by the department to the seller or the seller's immediate family. Such vessels shall not be used by any owner or operator as a commercial fishing or charter vessel in waters within the state of Washington, nor shall such vessels be used by any owner or operator to deliver fish within the boundaries of the state of Washington. The department shall require that the purchasers or other users of vessels resold or otherwise disposed of by the department execute any and all suitable instruments to insure compliance with the requirements of this section. The director may commence suit or be sued on any such instrument in any state court of record or United States district court having jurisdiction. [1979 1st ex.s. c 43 § 2; 1975 1st ex.s. c 183 § 6.]

Reviser's note: See note following RCW 75.28.505.

75.28.525 Program to purchase fishing vessels, gear, licenses and permits—Violations—Penalties—Forfeiture. Any person violating any of the provisions of RCW 75.28.500 through 75.28.540, or of any of the rules or regulations of the director made pursuant thereto, or who aids or abets or assists in the violation thereof, shall be guilty of a gross misdemeanor, and upon a conviction thereof shall be punished by imprisonment for not less than thirty days or more than one year, or by a fine of not less than twenty-five dollars or more than one thousand dollars, or both. Upon conviction of any person of a violation of any provision of RCW 75.28.500 through 75.28.540, or rule or regulation of the director, the judge or justice of the peace may, in addition to the penalty imposed by law, provide for the forfeiture of the vessel and licenses and/or permits to the state of Washington. [1975 1st ex.s. c 183 § 7.]

Reviser's note: See note following RCW 75.28.505.

75.28.530 Program to purchase fishing vessels, gear, licenses and permits—Administration of program—Advisory board—Travel expenses. The director shall promulgate rules and regulations concerning the operation of such program in accordance with the provisions of chapter 34.04 RCW. The director may enlist the aid of such other state agencies to assist the department in the administration of the provisions of RCW 75.28.500 through 75.28.540. To minimize the impact of this program on other ongoing state activities as well as on current staffing levels, the director shall have the authority to contract with persons or entities not employed by the

state to assist in the administration of the provisions of RCW 75.28.500 through 75.28.540.

The director shall appoint an advisory board composed of five individuals who are knowledgeable of the commercial fishing industry to assist the director, including the rendering of advice from time to time concerning the values of licenses and permits which may be purchased pursuant to the provisions of RCW 75.28.510, and to perform such other functions as deemed appropriate by the director. The members of such advisory board shall be reimbursed for travel expenses pursuant to RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day or major portion thereof spent in the performance of their duty. [1979 1st ex.s. c 43 § 4; 1975-'76 2nd ex.s. c 34 § 172; 1975 1st ex.s. c 183 § 8.]

Reviser's note: See note following RCW 75.28.505.

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

75.28.535 Program to purchase fishing vessels, gear, licenses and permits—Effective date—Administration—Vessel, gear, license and permit reduction fund. The provisions of RCW 75.28.500 through 75.28.540 as now or hereafter amended, shall become effective on January 1, 1978, or thereafter, only upon receipt by the department from the federal government of funds in an amount sufficient to administer such provisions and to accomplish its purposes.

The director shall be the responsible state officer for the administration of, and the disbursement of all funds, goods, commodities, and services, which may be received by the state in connection with the provisions of RCW 75.28.500 through 75.28.540 as now or hereafter amended. There is created within the state treasury a fund to be known as the "vessel, gear, license, and permit reduction fund", which shall be used for the purchase of vessels, licenses, permits, and fishing gear as provided in RCW 75.28.500 through 75.28.540 as now or hereafter amended, and for the administration of the provisions of RCW 75.28.500 through 75.28.540 as now or hereafter amended. This fund shall be credited with any federal or other funds received to carry out the purposes of RCW 75.28.500 through 75.28.540 as now or hereafter amended, and shall also be credited with all proceeds from the sale or other disposition of any property purchased pursuant to RCW 75.28.510 as now or hereafter amended. [1977 ex.s. c 230 § 5; 1975 1st ex.s. c 183 § 9.]

75.28.540 Program to purchase fishing vessels, gear, licenses and permits—Time limitation to apply for participation—Completion of program. No application for participation in the program provided for in RCW 75.28.500 through 75.28.540 shall be accepted by the department later than December 31, 1981. The director shall provide for the expeditious completion of the program thereafter and shall notify the state legislature when such provisions might appropriately be declared null and void. [1979 1st ex.s. c 43 § 3; 1977 ex.s. c 230 § 6; 1975 1st ex.s. c 183 § 10.]

75.28.600 Anadromous salmon angling licenses—Declaration of state policy. The legislature, recognizing that anadromous salmon within the waters of the state and offshore waters are fished for both recreational and commercial purposes and that the recreational anadromous salmon fishery is a major recreational and economic asset to the state and improves the quality of life for all residents of the state, declares that it is the policy of the state to enhance and improve recreational anadromous salmon fishing in the state. [1977 ex.s. c 327 § 10.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.28.610 Anadromous salmon angling licenses—Required—Penalty. (1) It shall be unlawful for any person sixteen years of age or older, and under seventy years of age, to take, fish for, or have in his possession any anadromous salmon that is taken for personal use from the waters or offshore waters of this state, without first having obtained and having in his possession an anadromous salmon angling license as provided in RCW 75.28.630, unless otherwise exempt from state licensing laws.

(2) Every violation of this section is a misdemeanor punishable by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both. [1977 ex.s. c 327 § 11.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.28.620 Anadromous salmon angling licenses—Issuance—Rules. All anadromous salmon angling licenses issued under RCW 75.28.630 shall be issued by or under authority of the director, who may deputize any reputable citizen to issue the licenses and collect the fees therefor.

The director shall adopt such rules as he deems necessary for the issuance of anadromous salmon angling licenses and for the collection, payment, and handling of fees prescribed in RCW 75.28.630 and 75.28.640. The rules shall be adopted in conformity with chapter 34.04 RCW. [1977 ex.s. c 327 § 12.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.28.630 Anadromous salmon angling licenses—Fees—"Resident" defined—Exemptions. (1) The fees for an annual resident fresh and saltwater anadromous salmon angling license and for an annual nonresident saltwater anadromous salmon angling license shall each be three dollars. The fees for a one day resident fresh and saltwater anadromous salmon angling license and for a one day nonresident saltwater anadromous salmon angling license shall each be one dollar. The fee for an annual nonresident freshwater anadromous salmon angling license shall be ten dollars. The fee for a three consecutive day nonresident freshwater anadromous salmon angling license shall be five dollars.

(2) Notwithstanding any other definitions in this title, the term "resident" as used in this section means any

person who for at least thirty days immediately preceding any application for a license has maintained a permanent place of abode within this state and has established by formal evidence an intent to continue residence within this state. All other persons are nonresidents.

(3) An annual license shall be effective only during the calendar year in which it is issued. An annual license shall be valid for a maximum catch of thirty salmon after which another annual license may be purchased.

(4) Any person sixty-five or more years of age who is an honorably discharged veteran of the United States military or naval forces having a service-connected disability and who has been a resident of this state for five years, upon the making of an affidavit to this effect, shall be given an anadromous salmon angling license free of charge upon application therefor.

Any person who is blind shall be issued an anadromous salmon angling license free of charge upon application therefor.

Anadromous salmon angling licenses issued under this subsection shall be considered valid for the lifetime of the holder. [1977 ex.s. c 327 § 13.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.28.640 Anadromous salmon angling licenses—Issuer's compensation. Any person deputized by the director to issue anadromous salmon angling licenses shall collect the sum of twenty-five cents in addition to the license fee, which sum shall be retained by such person. [1977 ex.s. c 327 § 14.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.28.650 Anadromous salmon angling licenses—Nontransferable—Enforcement provisions. Anadromous salmon angling licenses shall not be transferable. Any person fishing for anadromous salmon or having anadromous salmon in his or her possession that are taken for personal use from the waters of this state or offshore waters shall, upon demand of any fisheries patrol officer, fisheries inspector, deputy fisheries inspector, game protector, or law enforcement officer within their respective jurisdiction, exhibit his or her license and write his or her name for the purpose of comparison with the signature on the license. Failure to exhibit the license and to write the name upon demand shall be prima facie evidence that the person has no license or is not the person named on the license in the person's possession. [1977 ex.s. c 327 § 15.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.28.660 Anadromous salmon angling licenses—Falsification—Penalty. Any person who knowingly falsifies any information required for the issuance of an anadromous salmon angling license shall be guilty of a misdemeanor. [1977 ex.s. c 327 § 16.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.28.670 Anadromous salmon angling licenses—Concurrent waters of Columbia river—Reciprocity. In concurrent waters of the Columbia river where the river forms the boundary between the state of Washington and the state of Oregon and in Washington coastal territorial waters from the Oregon-Washington boundary to a point five nautical miles north, an Oregon angling license comparable to the Washington anadromous salmon angling license shall be valid if the Oregon license is valid within the jurisdiction of Oregon and the state of Oregon recognizes as valid the Washington anadromous salmon angling license in comparable Oregon waters.

Nothing in this section shall be construed to mean that any Oregon licenses are valid for the taking of salmon when angling in concurrent waters of the Columbia river from the Washington shore. [1977 ex.s. c 327 § 17.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

Chapter 75.30

SALMON CHARTER BOAT LICENSING LIMITATIONS

Sections

75.30.010	Legislative findings.
75.30.020	Moratorium on issuance of licenses—Renewals—Transfers.
75.30.030	Charter boats under construction or purchased between April 16, 1976 and May 28, 1977.
75.30.040	Duty of department to evaluate and recommend phase II approach.
75.30.050	Advisory board of review.
75.30.060	Hearings.
75.30.070	Anglers' permits.
75.30.080	Anglers' permits/boat size schedule.
75.30.090	Maximum number of anglers—Penalty.
75.30.100	Anglers limited—Permits transferred.
75.30.110	Expiration of chapter.

75.30.010 Legislative findings. The legislature finds that the wise management and economic health of the state's salmon fishery are of continued importance to the people of the state and to the economy of the state as a whole. The legislature finds that charter boats licensed by the state for use by the state's charter boat fishing industry have increased in quantity. The legislature finds that limitations on the number of licensed charter boats will tend to improve the management of the charter boat fishery and the economic health of the charter boat industry. The state therefore must use its authority to regulate the number of licensed boats in use by the state's charter boat industry in a manner provided in this chapter so that management and economic health of the salmon fishery may be improved. [1977 ex.s. c 106 § 1.]

Severability—1977 ex.s. c 106: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 106 § 10.]

75.30.020 Moratorium on issuance of licenses—Renewals—Transfers. For the purposes of this chapter, the term "charter boat" shall refer only to those charter boats from which salmon are taken. On and after May 28, 1977, the department shall initiate a moratorium on the issuance of charter boat licenses by issuing such licenses only to those boats whose owners can prove by means of good and sufficient documentary evidence that the boat was licensed pursuant to RCW 75.28.095 between January 1, 1974, and January 1, 1977. No charter boat shall be entitled to more than one charter boat license.

Such boats shall be entitled to receive and renew the charter boat license for each year during the period from May 28, 1977 through December 31, 1981. A charter boat license for which no application is made to the department or which is not renewed in any year automatically expires and shall not be renewed further.

Nothing herein shall be construed to be contrary to the provisions of Title 75 RCW or any rule promulgated thereunder. All such charter boat licenses shall be transferable. [1979 c 101 § 7; 1977 ex.s. c 106 § 2.]

Effective date—1979 c 101: See note following RCW 75.30.070.

Severability—1977 ex.s. c 106: See note following RCW 75.30.010.

75.30.030 Charter boats under construction or purchased between April 16, 1976 and May 28, 1977. In addition to the charter boat licenses issued pursuant to RCW 75.30.020, the department shall issue a charter boat license to any charter boat which was under construction or purchased in good faith between April 16, 1976, and May 28, 1977. [1977 ex.s. c 106 § 3.]

Severability—1977 ex.s. c 106: See note following RCW 75.30.010.

75.30.040 Duty of department to evaluate and recommend phase II approach. On and after May 28, 1977, the department, in cooperation with representatives of the charter boat industry, shall continually evaluate the provisions of RCW 75.30.010, 75.30.020, and 75.30.030 and recommend to the legislature prior to January 1, 1980, a phase II approach to regulate gear entry into this state's charter boat fishery. [1977 ex.s. c 106 § 4.]

Severability—1977 ex.s. c 106: See note following RCW 75.30.010.

75.30.050 Advisory board of review. The director shall appoint a three member advisory board of review to hear cases as provided in RCW 75.30.060. The members of such review board shall be nominated by the charter boat fishing industry, shall serve without pay, and shall serve at the discretion of the director of the department of fisheries. The members of such review board shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The director may promulgate

rules concerning the operation of such review boards in accordance with chapter 34.04 RCW. [1977 ex.s. c 106 § 5.]

Severability—1977 ex.s. c 106: See note following RCW 75.30.010.

75.30.060 Hearings. Any person aggrieved by a decision of the department made pursuant to the terms of this chapter may voluntarily request that a board of review be impaneled to hear such person's case.

The board of review may make such other recommendations and determinations as are consistent with the terms of this chapter.

Hearings before review boards shall be informal, the rules of evidence shall not be applicable to the proceedings, and the records shall be kept thereof as provided by chapter 34.04 RCW. After the presentation of a case each review board shall inform the director and the initiating party in writing concerning whether or not the review board recommends that the charter boat license be issued and the reason for such recommendation. Upon receipt of the review board's findings the director may order such relief as the director deems appropriate under the circumstances.

Nothing in this section shall be construed: (1) To impair an aggrieved person's right to proceed under chapter 34.04 RCW; or (2) to impose any liability on members of a review board for their action pursuant to this section. [1977 ex.s. c 106 § 6.]

Severability—1977 ex.s. c 106: See note following RCW 75.30.010.

75.30.070 Anglers' permits. In addition to the salmon charter boat license required under chapter 75.28 RCW, every owner of a salmon charter boat operating in salt water and eligible for licensing under RCW 75.30.020 or 75.30.030 shall obtain from the department, without charge, a yearly angler permit specifying the maximum number of persons, or "anglers," that may fish from the charter boat at any one time.

Failure to comply with this section constitutes a gross misdemeanor. [1979 c 101 § 2.]

Effective date—1979 c 101: "This act shall take effect on January 1, 1980." [1979 c 101 § 10.]

75.30.080 Anglers' permits/boat size schedule. The initial number of anglers that the department may authorize under RCW 75.30.070 for a salmon charter boat shall be determined under the schedule established in this section.

As used in this schedule, "length of boat" means the length, in feet, of the salmon charter boat as shown on the United States Coast Guard certificate of inspection, not exceeding the size specified in the schedule. "Number of anglers" means the initial number of anglers that may be authorized by the department for a boat of the size specified.

Length of boat:	Number of anglers:	Length of boat:	Number of anglers:
31.5	8	51.5	20
32.5	9	52.5	21
34.5	10	54.5	22
36.5	11	56.5	23
37.5	12	58.5	24
39.5	13	59.5	25
41.5	14	60.5	27
42.5	15	61.5	29
44.5	16	62.5	30
46.5	17	63.5	31
47.5	18	64.5	33
49.5	19	over 64.5	34

Vessels exceeding a length specified in the schedule may be authorized the number of anglers provided for the next higher category.

Vessels not inspected by the United States Coast Guard will be issued a permit by the department to carry up to six anglers.

Those salmon charter boats licensed prior to January 1, 1978, whose hulls, such as fifty-four foot Thermodyne brand hulls, are substantially wider than conventional hull designs, are exempt from the schedule established in this section and will be issued a permit by the department to carry up to twenty-five anglers. [1979 c 101 § 3.]

Effective date—1979 c 101: See note following RCW 75.30.070.

75.30.090 Maximum number of anglers—Penalty. A salmon charter boat may not carry anglers, other than members of the crew, exceeding the number of anglers specified in the angler permit issued to the boat under RCW 75.30.070. Members of the crew may fish from the boat only to the extent that the number of anglers specified in the angler permit exceeds the number of noncrew passengers on the boat at that time.

Failure to comply with this section constitutes a gross misdemeanor. [1979 c 101 § 4.]

Effective date—1979 c 101: See note following RCW 75.30.070.

75.30.100 Anglers limited—Permits transferred. (1) The total aggregate number of anglers authorized by the department shall be fixed and may not exceed the total number initially authorized for eligible boats under RCW 75.30.070.

(2) Angler permits issued under RCW 75.30.070 are fully transferable. A charter boat possessing an angler permit may transfer all or a portion of the permit to another charter boat. The holder of such a permit, after complying with subsection (3) of this section, may use, and renew, the permit, even though the use of the permit will allow the charter boat to exceed the initial number of anglers established in RCW 75.30.080.

(3) When an angler permit is transferred, the department shall be notified, and the department shall issue a new angler permit certificate. If the original permit holder retains a portion of the permit, the department shall issue a new angler permit certificate reflecting the decrease in authorized angler capacity. The department

shall collect a fee of ten dollars for each certificate issued under this subsection. [1979 c 101 § 5.]

Effective date—1979 c 101: See note following RCW 75.30.070.

75.30.110 Expiration of chapter. This chapter, and any subsequent amendments, shall expire on December 31, 1981. [1979 c 101 § 6.]

Effective date—1979 c 101: See note following RCW 75.30.070.

Chapter 75.32

PRIVILEGE FEES AND FISH SALES TAXES

Sections

75.32.001	"Primary market value" defined.
75.32.003	"Food fish and shellfish" include parts.
75.32.020	Privilege fees and fish sales taxes required.
75.32.030	Canners, processors, dealers—Privilege fees— Exceptions.
75.32.033	Credits against privilege fees owed under RCW 75.32.030.
75.32.035	Rules as to proof required for credits claimed under RCW 75.32.033.
75.32.051	Oyster canners, processors, dealers—Privilege fee.
75.32.055	Fish sales tax—Imposed—Rates— Exemptions.
75.32.065	Payment of privilege fees and fish sales tax—Food fish or shellfish handled by original receivers— Sales to nonresident purchasers.
75.32.080	Collection of fish sales tax by original receiver— "Original receiver" defined.
75.32.090	When privilege fees and fish sales taxes due and pay- able—Returns.
75.32.101	Delinquent payments—Penalties—Interest— Lien—Date of filing governed by postmark.
75.32.110	Director may make rules, etc., to insure payment of fees and taxes.
75.32.115	Audits—Rules and procedures.
75.32.120	Penalty for violations.
75.32.130	Director may require bond after wilful violation— License revocation for failure.

75.32.001 "Primary market value" defined. "Primary market value" as used in this chapter means the ex-vessel price paid by the purchasers of food fish and shellfish to the seller at the point where ownership or title to the food fish or shellfish passes. [1965 ex.s. c 71 § 1.]

75.32.003 "Food fish and shellfish" include parts. As used in this chapter, the terms food fish and shellfish also include parts of food fish and shellfish. [1977 ex.s. c 327 § 25.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.020 Privilege fees and fish sales taxes required. In addition to all other taxes, licenses or fees provided by law there shall be paid to the state of Washington by those engaged in the fishing industry in this state the privilege fees and fish sales taxes as provided for in this chapter. [1977 ex.s. c 327 § 19; 1955 c 12 § 75.32.020. Prior: 1949 c 107 § 1, part; Rem. Supp. 1949 § 5780-60, part.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.030 Cannery, processors, dealers—Privilege fees—Exceptions. Cannery, curers, freezers, wholesale dealers and retail dealers of food fish and shellfish, other than oysters, and manufacturers of food fish and shellfish byproducts, other than oyster byproducts, but not including any person with respect to the growing, processing or dealing in any manner with food fish which are raised from eggs or fry, and are under the physical control of the grower at all times until being sold or harvested, (1) shall pay a privilege fee equal to five percent of the primary market value on all fresh or frozen chinook, coho, and chum salmon, or parts thereof, which they receive, handle, deal in, or deal with as original receiver in the state; (2) shall pay a privilege fee equal to three percent of the primary market value on all fresh or frozen pink and sockeye salmon, or parts thereof, which they receive, handle, deal in, or deal with as original receiver in the state; and (3) shall pay a privilege fee equal to two percent of the primary market value on all other fresh or frozen food fish and shellfish, or parts thereof, except oysters, which they receive, handle, deal in or deal with, as original receiver in the state: *Provided*, That any person or sales agency selling fresh or frozen food fish or shellfish, or parts thereof, to purchasers of food fish or shellfish residing outside the state of Washington which had been previously landed in the state, shall be responsible for and shall pay the privilege fees herein provided. [1979 1st ex.s. c 203 § 1; 1977 ex.s. c 327 § 20; 1963 ex.s. c 10 § 1; 1955 c 212 § 12; 1955 c 12 § 75.32.030. Prior: 1953 c 207 § 6; 1951 c 271 § 34; 1949 c 107 § 1(1); Rem. Supp. 1949 § 5780-60(1).]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.033 Credits against privilege fees owed under RCW 75.32.030. The following amounts may be credited against the amount of privilege fees owed under RCW 75.32.030 by a canner, curer, dealer, freezer, or manufacturer:

(1) In respect to each transaction in which the fish sales tax is collected pursuant to RCW 75.32.080, as now or hereafter amended, and a privilege fee is owed, the amount of the sales tax collected shall be credited against such privilege fee.

(2) Any sales tax, catch tax, landing tax, or other tax or fee on food fish or shellfish, or parts thereof, purchased by an original receiver, as defined in RCW 75.32.080, as now or hereafter amended, in another state and imposed on the receiver by such state shall be credited against the amount of privilege fees owed in respect to such food fish or shellfish, or parts thereof. [1977 ex.s. c 327 § 23.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.035 Rules as to proof required for credits claimed under RCW 75.32.033. The director shall adopt rules specifying the proof required for credits claimed under RCW 75.32.033 and the manner in which the credits shall be taken. [1977 ex.s. c 327 § 24.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.051 Oyster canners, processors, dealers—Privilege fee. Cannery, curers, freezers, wholesale dealers and retail dealers of oysters, and manufacturers of oyster byproducts, shall pay a privilege fee equal to one cent per gallon or bushel on Pacific oysters, and six and one-half cents per gallon or bushel on Olympia oysters, New Washington oysters, or Kumamoto oysters which they receive, handle, deal in, or deal with as original receiver in this state: *Provided*, That any person or sales agency selling fresh or frozen oysters, or parts thereof, previously taken in the state to purchasers of food fish or shellfish residing outside the state of Washington, shall be responsible for and shall pay the privilege taxes herein provided. [1977 ex.s. c 327 § 21; 1955 c 212 § 13.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.055 Fish sales tax—Imposed—Rates—Exemptions. (1) Except as provided in subsection (2) of this section, there is hereby imposed a fish sales tax on the privilege of selling food fish or shellfish, or parts thereof, to an original receiver as defined in RCW 75.32.080, as now or hereafter amended. The tax shall be as follows:

(a) Two and one-half percent of the primary market value on all fresh or frozen chinook, coho, and chum salmon, or parts thereof;

(b) One and one-half percent of the primary market value on all fresh or frozen pink and sockeye salmon, or parts thereof;

(c) One percent of the primary market value on all other fresh or frozen food fish and shellfish, or parts thereof.

(2) The sales tax prescribed in this section shall not apply to sales of shellfish, or parts thereof, taken from a licensed oyster or clam farm or to sales of food fish or shellfish, or parts thereof, taken from a licensed fish farm. [1977 ex.s. c 327 § 22.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.065 Payment of privilege fees and fish sales tax—Food fish or shellfish handled by original receivers—Sales to nonresident purchasers. (1) The privilege fees and fish sales taxes provided for in this chapter shall be paid on all fresh or frozen food fish or shellfish handled by the original receivers regardless of where the fish or shellfish were caught: *Provided*, That no fee or tax shall be paid on frozen food fish or frozen shellfish or on food fish or shellfish which has been packaged for retail sales and that has been previously landed in another state, territory, or country.

(2) Any person or sales agency selling fresh or frozen food fish or shellfish previously landed in this state to purchasers of food fish or shellfish residing outside this state shall be responsible for and shall pay the privilege fees and fish sales taxes. [1977 ex.s. c 327 § 26.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.080 Collection of fish sales tax by original receiver—"Original receiver" defined. The fish sales tax provided for herein shall be deducted from the payments made by the original receiver to the person selling the food fish or shellfish to the original receiver, and the original receiver shall collect the taxes and remit them to the director.

"Original receiver" means the person first receiving, handling, dealing in, or dealing with the fresh or frozen food fish or shellfish within the jurisdiction of the state of Washington as a canner, curer, freezer, retail dealer, wholesale dealer, byproducts manufacturer, or branch plant. [1977 ex.s. c 327 § 27; 1955 c 12 § 75.32.080. Prior: 1953 c 207 § 8; 1951 c 271 § 36; 1949 c 107 § 1(5), part; Rem. Supp. 1949 § 5780-60(5), part.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.090 When privilege fees and fish sales taxes due and payable—Returns. The privilege fees and fish sales taxes herein provided for are due and payable in quarterly installments, and the fees and taxes accruing during each quarterly period shall become due on the first day of the month immediately following the end of the quarterly period, and shall be paid on or before the last day of that month. The following shall constitute the quarterly periods to be utilized:

- (1) January, February, March;
- (2) April, May, June;
- (3) July, August, September;
- (4) October, November, December.

On or before the day payment is required as provided above, the person paying the privilege fees and fish sales taxes to the department shall prepare a return under oath upon such forms and setting forth such information as the director may require, and transmit the same to the director together with a remittance for the fees and taxes which are due. Any person that is subject at any time of the year to the privilege fee provisions set forth in this chapter shall file a return each quarter of the year showing whether or not any fees or taxes are due. [1977 ex.s. c 327 § 28; 1967 c 193 § 1; 1963 ex.s. c 9 § 1; 1955 c 12 § 75.32.090. Prior: 1949 c 107 § 2; Rem. Supp. 1949 § 5780-61.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.101 Delinquent payments—Penalties—Interest—Lien—Date of filing governed by postmark. In the event payment of fees and taxes provided for under this chapter is not received by the fifteenth day of the month in which the fees and taxes become due, the fees and taxes shall become delinquent and the schedule of penalties stated below shall be invoked. A return or remittance which is transmitted to the director by United States mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it. The following shall be the schedule of penalties to be assessed for delinquent payments of such fees and taxes:

(1) Sixteen through thirty days after due date—Add ten percent of total fees and taxes due but not less than one dollar.

(2) Thirty-one through sixty days after due date—Add twenty percent of total fees and taxes due but not less than two dollars.

(3) Sixty-one through ninety days after due date—Add twenty-five percent of total fees and taxes due but not less than three dollars.

(4) Ninety-one days or more after due date—Add twenty-five percent of total fees and taxes due (but not less than three dollars) plus eight percent interest per annum computed on the sum of the total fees and taxes due and the percentage penalty.

The delinquent fees and taxes together with the applicable penalties and accrued interest thereon shall constitute a first lien upon the cannery, packing plant, buildings, scows, boats, vehicles and other equipment used by the person or business owing the fees and taxes in the taking, handling, dealing in, dealing with, or processing of food fish or shellfish. [1977 ex.s. c 327 § 29; 1963 ex.s. c 9 § 2.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.110 Director may make rules, etc., to insure payment of fees and taxes. The director shall have the authority to promulgate such rules, regulations, and orders, and to require such reports as in his judgment shall be necessary to insure the payment of the fees and taxes herein required. [1977 ex.s. c 327 § 30; 1955 c 12 § 75.32.110. Prior: 1949 c 107 § 4; Rem. Supp. 1949 § 5780-63.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.115 Audits—Rules and procedures. The department or its designee may audit any original receiver as defined in RCW 75.32.080, as now or hereafter amended, for the purpose of assuring the collection of privilege fees and fish sales taxes provided for in this chapter, or for the purpose of collecting unpaid fees and taxes. The director may adopt rules and procedures to govern the collection of any fees and taxes under this chapter. [1977 ex.s. c 327 § 31.]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.18.100.

75.32.120 Penalty for violations. In event any person wilfully violates the provisions of this chapter, or any of the rules, regulations, or orders of the director made pursuant to this chapter, he is guilty of a gross misdemeanor and subject to a fine, or imprisonment, or both. [1955 c 12 § 75.32.120. Prior: 1949 c 107 § 5; Rem. Supp. 1949 § 5780-64.]

75.32.130 Director may require bond after wilful violation—License revocation for failure. In event any person wilfully violates any of the provisions of this chapter or the rules, regulations, and orders of the director made pursuant to the provisions of this chapter,

the director shall have the authority to require such person to post a bond, in an amount not to exceed five thousand dollars, conditioned upon his faithful performance of the provisions of the chapter and the rules, regulations, and orders of the director made pursuant to this chapter, and in event such person fails to post such a bond within thirty days after the same is demanded by the director, the director shall forthwith cancel and revoke any license or licenses to engage in the fishing industry that such person was theretofore issued by the state of Washington. [1955 c 12 § 75.32.130. Prior: 1949 c 107 § 6; Rem. Supp. 1949 § 5780-65.]

Chapter 75.36

SEIZURE AND FORFEITURE OF PROPERTY FOR VIOLATIONS

Sections

75.36.010	Seizure of property without warrant—Where authorized—Deposit of cash bond in lieu.
75.36.020	Forfeiture may be in addition to other penalties.
75.36.030	Service of process and forfeiture where identity of violator not known.
75.36.040	Concurrent jurisdiction of justice and superior courts.
75.36.050	Sale or destruction of property forfeited—Disposition of proceeds.

75.36.010 Seizure of property without warrant—Where authorized—Deposit of cash bond in lieu. The director, fisheries inspectors, deputy fisheries inspectors, and ex officio fisheries inspectors may seize without warrant all food fish, shellfish, or parts thereof taken, killed, transported, or possessed contrary to law or rule or regulation of the director and may seize in a similar manner any boat, vehicle, gear, appliance, or other device used in violation of the fisheries code or the regulations of the director, or held with intent to violate the fisheries code or the regulations of the director, and the articles seized shall be forfeited to the state, regardless of the ownership of the articles seized: *Provided*, That the owner of the boat, vehicle, gear, appliance, or other device so seized may recover the same by depositing into court a cash bond equal to the value of the seized articles if the value of the same be less than five thousand dollars, or a cash bond in the amount of five thousand dollars, if the value of the seized boat, vehicle, gear, appliance, or other device be in excess of five thousand dollars, and the cash bond shall thereafter be subject to forfeiture to the state in lieu of the seized boat, vehicle, gear, appliance, or other device. [1955 c 12 § 75.36.010. Prior: 1949 c 112 § 76(1); Rem. Supp. 1949 § 5780-602(1).]

75.36.020 Forfeiture may be in addition to other penalties. The court shall have the power and jurisdiction in any prosecution for violation of the fisheries code or regulations of the director, in addition to imposing any penalty provided by law, to order forfeited to the state any articles seized under the provisions of this chapter. [1955 c 12 § 75.36.020. Prior: 1949 c 112 § 76(2); Rem. Supp. 1949 § 5780-602(2).]

75.36.030 Service of process and forfeiture where identity of violator not known. In event it appears upon affidavit that the identity of the person responsible for the violation for which the seizure was made, is unknown or that for any reason the state is unable to prosecute the person responsible for the violation for which the seizure was made, the court nevertheless shall have the power and jurisdiction to forfeit such articles so seized upon a hearing duly held after service of summons describing the articles seized and giving notice of pending forfeiture by publication in the manner provided by law for the service of summons in civil actions. [1955 c 12 § 75.36.030. Prior: 1949 c 112 § 76(3); Rem. Supp. 1949 § 5780-602(3).]

75.36.040 Concurrent jurisdiction of justice and superior courts. Justice courts and superior courts shall have concurrent jurisdiction to order the forfeitures provided for in this chapter. [1955 c 12 § 75.36.040. Prior: 1949 c 112 § 76(4); Rem. Supp. 1949 § 5780-602(4).]

75.36.050 Sale or destruction of property forfeited—Disposition of proceeds. In the event of seizure and forfeiture of any articles as provided in this chapter, the director may sell or destroy all or any of such articles at public auction. The time, place, and manner of holding such sale shall be within the discretion of the director. Notice of the time and place of any such sale shall be published once a week for at least two consecutive weeks in advance of such sale, in at least one newspaper of general circulation in the county wherein the sale is to be held.

The proceeds from all such sales shall be deposited with the state treasurer to credit of the general fund. [1955 c 12 § 75.36.050. Prior: 1951 c 271 § 38; 1949 c 112 § 76(5); Rem. Supp. 1949 § 5780-602(5).]

Chapter 75.40 COMPACTS

Sections

75.40.010	Compact with Oregon as to Columbia River fisheries authorized.
75.40.020	Director to represent state in changing Columbia River fishing seasons.
75.40.030	Pacific Marine Fisheries Compact—Provisions.
75.40.040	Representatives of this state on Pacific fisheries commission.
75.40.050	Offshore fishing in Pacific—Rules and regulations.
75.40.060	Fraser River sockeye salmon fishery—Adoption, enforcement of convention authorized.
75.40.070	Penalty for violation of rules and regulations.

75.40.010 Compact with Oregon as to Columbia River fisheries authorized. Should congress by virtue of the authority vested in it under Article 1, section 10, of the Constitution of the United States, providing for compacts and agreements between states, ratify the recommendations of the conference committees of the states of Washington and Oregon, appointed to agree on legislation necessary for the regulation, preservation and protection of fish in the waters of the Columbia River, or its

tributaries, over which said states have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, said recommendation being as follows: "We further recommend that a resolution be passed by the legislatures of Washington and Oregon, whereby the ratification by Congress of the laws of the states of Washington and Oregon shall act as a treaty between said states, subject to modification only by joint agreement by said states"; and said recommendation having been approved by resolution adopting the report of the conference committee, then, and in that event, there shall exist between the states of Washington and Oregon a definite compact and agreement, the purport of which shall be substantially as follows:

All laws and regulations now existing or which may be necessary for regulating, protecting or preserving fish in the waters of the Columbia River, or its tributaries, over which the states of Washington and Oregon have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, shall be made, changed, altered and amended in whole or in part, only with the mutual consent and approbation of both states. [1955 c 12 § 75.40.010. Prior: 1949 c 112 § 80; Rem. Supp. 1949 § 5780-701.]

75.40.020 Director to represent state in changing Columbia River fishing seasons. The director is hereby authorized for and on behalf of the state of Washington to give to the state of Oregon such consent and approbation of the state of Washington as is necessary under and pursuant to the compact entered into between the states of Washington and Oregon, as set out in RCW 75.40.010, to change the open and closed seasons in the Columbia River district as permitted in this chapter. [1955 c 12 § 75.40.020. Prior: 1949 c 112 § 81; Rem. Supp. 1949 § 5780-702.]

75.40.030 Pacific Marine Fisheries Compact—Provisions. Should congress, by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States, providing for compacts and agreements between the states, ratify The Pacific Marine Fisheries Compact after the enactment of this compact by the states of Alaska, California, Idaho, Oregon and Washington, then, and in that event, there shall exist between the contracting states a definite compact and agreement, the purport of which shall be substantially as follows:

THE PACIFIC MARINE FISHERIES COMPACT

The contracting states do hereby agree as follows:

ARTICLE I.

The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadromous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the compacting states jointly or separately now have or may hereafter acquire jurisdiction.

Nothing herein contained shall be construed so as to authorize the compacting states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

ARTICLE II.

This agreement shall become operative immediately as to those states executing it whenever the compacting states have executed it in the form that is in accordance with the laws of the executing states and the congress has given its consent.

ARTICLE III.

Each state joining herein shall appoint, as determined by state statutes, one or more representatives to a commission hereby constituted and designated as The Pacific Marine Fisheries Commission, of whom one shall be the administrative or other officer of the agency of such state charged with the conservation of the fisheries resources to which this compact pertains. This commission shall be a body with the powers and duties set forth herein.

The term of each commissioner of The Pacific Marine Fisheries Commission shall be four years. A commissioner shall hold office until his successor shall be appointed and qualified but such successor's term shall expire four years from legal date of expiration of the term of his predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commissioner may be removed from office, as provided by the statutes of the state concerned. Each commissioner may delegate in writing from time to time to a deputy the power to be present and participate, including voting as his representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

Voting powers under this compact shall be limited to one vote for each state regardless of the number of representatives.

ARTICLE IV.

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell, and anadromous in all of those areas of the Pacific Ocean over which the states signatory to this compact jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislative

branches of the various signatory states hereto legislation dealing with the conservation of the marine, shell and anadromous fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the signatory states jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any state signatory hereto, present to the governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the signatory states with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies.

The commission shall have power to recommend to the states signatory hereto the stocking of the waters of such states with marine, shell, or anadromous fish and fish eggs or joint stocking by some or all of such states and when two or more of the said states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V.

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure, remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place within the territorial limits of the signatory states but must meet at least once a year.

ARTICLE VI.

No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the vote of a majority of the compacting states which have an interest in such species.

ARTICLE VII.

The fisheries research agencies of the signatory states shall act in collaboration as the official research agency of The Pacific Marine Fisheries Commission.

An advisory committee to be representative of the commercial fishermen, commercial fishing industry and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

ARTICLE VIII.

Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE IX.

Continued absence of representation or of any representative on the commission from any state party hereto, shall be brought to the attention of the governor thereof.

ARTICLE X.

The states agree to make available annual funds for the support of the commission on the following basis:

Eighty percent of the annual budget shall be shared equally by those member states having as a boundary the Pacific Ocean; not less than five percent of the annual budget shall be contributed by any other member state; the balance of the annual budget shall be shared by those member states, having as a boundary the Pacific Ocean, in proportion to the primary market value of the products of their commercial fisheries on the basis of the latest five-year catch records.

The annual contribution of each member state shall be figured to the nearest one hundred dollars.

This amended article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon, and Washington and upon ratification by congress by virtue of the authority vested in it under Article I, section 10 of the Constitution of the United States.

ARTICLE XI.

This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other parties hereto.

ARTICLE XII.

The states of Alaska or Hawaii, or any state having rivers or streams tributary to the Pacific Ocean may become a contracting state by enactment of The Pacific Marine Fisheries Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the conservation, protection and prevention of physical waste of fisheries in which the contracting states are mutually concerned and to all waters of the newly admitted state necessary to develop such programs.

This article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon and Washington and upon ratification by congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States. [1969 ex.s. c 101 § 2; 1959 ex.s. c 7 § 1; 1955 c 12 § 75.40.030. Prior: 1949 c 112 § 82(1); Rem. Supp. 1949 § 5780-703(1).]

Reviser's note: The 24th annual report (1971 p 40) of the Pacific Marine Fisheries Compact commission indicates congressional approval effective July 10, 1970 by P.L. 91-315, 91st congress; 84 Stat. 415.

Effective date—1969 ex.s. c 101: "The provisions of this 1969 amendatory act shall not take effect until such time as the proposed amendment to The Pacific Marine Fisheries Compact contained herein is approved by the congress of the United States." [1969 ex.s. c 101 § 1.] This applies to RCW 75.40.030.

75.40.040 Representatives of this state on Pacific fisheries commission. In the event the compact set forth in RCW 75.40.030 becomes effective, the director of fisheries, ex officio, and two appointees of the governor representing the fishing industry or an industry allied therewith, shall act as the representatives of this state on the Pacific Marine Fisheries Commission, in accordance with the provisions of, and with the powers and duties provided in the compact. The appointees of the governor shall be subject to confirmation by the state senate. [1963 c 171 § 2; 1955 c 12 § 75.40.040. Prior: 1949 c 112 § 82(2); Rem. Supp. 1949 § 5780-703(2).]

75.40.050 Offshore fishing in Pacific—Rules and regulations. In the event the compact set forth in RCW 75.40.030 becomes effective, the director shall have the power and he is hereby authorized from time to time to make, adopt, amend and promulgate, governing offshore fishing in the Pacific Ocean by citizens of this state, rules and regulations, prohibiting wastage of food or shellfish, establishing open and closed season for all fishing, designating areas open or closed to fishing, setting minimum and maximum sizes of fish and shellfish that may be taken, declaring the kinds of food or shellfish that may be used for bait, and regulating fishing gear to be used as to mesh, size and length of nets and number, length and size of line and hooks: *Provided, however,* That the Washington department of fisheries may adopt regulations for the waters west of the coast of the state of Washington that are consistent with the regulations adopted by the United States department of commerce for the waters three miles to two hundred miles west of the coast of the state of Washington pursuant to the National Fisheries Conservation and Management Act. [1977 ex.s. c 100 § 1; 1955 c 12 § 75.40.050. Prior: 1949 c 112 § 82(3); Rem. Supp. 1949 § 5780-703(3).]

75.40.060 Fraser River sockeye salmon fishery—Adoption, enforcement of convention authorized. The director and his duly authorized agents are hereby authorized to adopt and to enforce the provisions of the convention between the United States and the Dominion of Canada for the protection, preservation and extension of the sockeye salmon fishery of the Fraser River system, signed at Washington, District of Columbia, on the twenty-sixth day of May, 1930, and the regulations of the commission promulgated under authority of said convention. [1955 c 12 § 75.40.060. Prior: 1949 c 112 § 83; Rem. Supp. 1949 § 5780-704.]

75.40.070 Penalty for violation of rules and regulations. Any person violating any of the rules or regulations of the director issued in accordance with this chapter, shall be guilty of a misdemeanor. [1955 c 12 § 75.40.070. Prior: 1949 c 112 § 82(4); Rem. Supp. 1949 § 5780-703(4).]

Chapter 75.44

LOAN ASSISTANCE TO COMMERCIAL FISHERMEN

Sections

- 75.44.010 Legislative finding and intent.
- 75.44.020 Definitions.
- 75.44.030 Authority to make loans—Eligibility.
- 75.44.040 Loan restrictions and limitations.
- 75.44.050 Administration of program.
- 75.44.060 Effective date, expiration of chapter.
- 75.44.070 Authority to accept federal funds—Interest payment loan fund—Investments.
- 75.44.080 Time limitation to make application.

Program to purchase vessels, gear, licenses and permits: RCW 75.28.500-75.28.540.

75.44.010 Legislative finding and intent. The legislature finds that the economic health and stability of the commercial fishing industry is of paramount importance to the people of this state. The recent federal court decision, United States of America et al v. State of Washington et al, Civil No. 9213, United States District Court for the Western District of Washington, February 12, 1974, together with department of fisheries compliance therewith, have had an adverse impact on this economic health and stability. The public welfare requires that the state have the authority to transmit federal funds in the form of loans to eligible productive commercial fishermen.

Retaining productive commercial fishermen in the state's fishery will enhance productivity by the fishing industry, will improve economic opportunity for those fishermen dependent upon the resource as a source of income, and will contribute to sound conservation and harvesting programs affecting this important state fishery resource. It is the intention of the legislature to provide assistance to productive commercial fishermen who are adversely affected by the current economic situation in the state's commercial fishery. [1975 1st ex.s. c 152 § 1.]

75.44.020 Definitions. As used in this chapter the terms in this section shall have the meanings indicated unless the context indicates otherwise.

(1) "Case area" shall have the meaning as defined in United States of America, et al v. State of Washington, et al, Civil No. 9213, United States District Court for the Western District of Washington, February 12, 1974, which is: "That portion of the State of Washington west of the Cascade Mountains and north of the Columbia River drainage area, and includes the American portion of the Puget Sound watershed, the watersheds of the Olympic Peninsula north of the Grays Harbor watershed, and the offshore waters adjacent to those areas". The director is authorized to modify the definition of "case area" to correspond to any subsequent definition included in a relevant decision of the same court, or in appellate review thereof, or where fishing rights are affected by some other court decision in a manner consistent with the above-mentioned decision.

(2) "Department" means the department of general administration.

(3) "Director" means the director of the department of general administration. [1975 1st ex.s. c 152 § 3.]

75.44.030 Authority to make loans—Eligibility. The department is empowered to make loans which the department determines to be necessary and appropriate to commercial fishermen. To be eligible a commercial fisherman shall:

- (1) Own a commercial fishing vessel;
- (2) Have been licensed to fish or deliver fish in 1974 in the case area;
- (3) Have been adversely affected by a fishing season in 1974 in the case area which was substantially restricted by the department of fisheries as a result of compliance with the federal court decision;
- (4) Be currently licensed to fish or deliver fish;
- (5) Be determined to be a productive commercial fisherman by the department in cooperation with the department of fisheries by an analysis of individual fish catch records for the calendar years 1972, 1973, 1974, and/or 1975; and
- (6) Be determined by the department to have been primarily dependent on commercial fishing for his or her earned income during at least one of the calendar years 1972, 1973, 1974, or 1975. [1975 1st ex.s. c 152 § 4.]

75.44.040 Loan restrictions and limitations. (1) Loans made pursuant to RCW 75.44.030 shall be used only to pay accrued and past due interest payments owing on obligations whose proceeds were used for the construction, reconstruction, or purchase of a commercial fishing vessel and shall not exceed the amount of such interest payments falling due during 1974 and 1975.

(2) No loan assistance provided under this chapter shall be made available to any fisherman who participates or seeks to participate in any aspect of the program administered through funds made available from the "vessel, gear, and permit reduction fund" if such fund is established pursuant to separate legislation.

(3) The provisions of subsections (1) and (2) of this section shall be subject to the following additional restrictions and limitations:

(a) No financial assistance shall be extended pursuant to this chapter unless the financial assistance applied for is not otherwise available on reasonable terms.

(b) No loan under this chapter shall be made if the total amount outstanding and committed to the borrower from the interest payment loan fund established by RCW 75.44.070 would exceed ten thousand dollars or is less than five hundred dollars.

(c) The rate of interest to be charged by the department for any such loan shall be at the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of one percent, plus one-quarter of one percent per annum.

(d) No such loan, including renewals or extensions thereof, may be made for a period or periods exceeding two years.

(e) All loans made pursuant to this chapter shall be of such sound value or so secured as reasonably to assure repayment.

(4) The director may establish priority classes of persons who might first qualify for loans under the provisions of this chapter in order that the purposes and objectives of the chapter shall be accomplished. [1975 1st ex.s. c 152 § 5.]

75.44.050 Administration of program. The director shall promulgate rules and regulations concerning the operation of such program in accordance with the provisions of chapter 34.04 RCW. The director may enlist the aid of such other state agencies to assist the department in the administration of the provisions of this chapter. To minimize the impact of this program on other ongoing state activities as well as on current staffing levels, the director shall have the authority to contract with persons or entities not employed by the state to assist in the administration of the provisions of this chapter. [1975 1st ex.s. c 152 § 6.]

75.44.060 Effective date, expiration of chapter. The provisions of this chapter shall become effective only upon receipt by the department from the federal government of funds in an amount sufficient to administer such provisions and to accomplish the purposes of this chapter. If such funds are not received or authorized prior to January 1, 1976, this chapter shall expire on said date, and shall be null and void and without any further force and effect on such date without any further action by the legislature. [1975 1st ex.s. c 152 § 7.]

75.44.070 Authority to accept federal funds—Interest payment loan fund—Investments. The department is empowered to receive and accept funds from the federal government for the administration of this program as authorized in the provisions of this chapter. There is created within the department a fund to be known as the "interest payment loan fund", which shall be used for the disbursement of loan moneys as provided in this chapter, and for the administration of the provisions of this chapter. This fund shall be credited with any federal funds received to carry out the purposes of this chapter and shall also be credited with all repayments of loans, payments of interest, and other receipts arising out of transactions entered into by the department pursuant to the provisions of this chapter. The director shall have the full power to invest and reinvest such funds in those classes of securities described in the provisions of RCW 43.84.150. [1975 1st ex.s. c 152 § 8.]

75.44.080 Time limitation to make application. No application for participation in the program provided for in this chapter shall be accepted by the department later than December 31, 1976. [1975 1st ex.s. c 152 § 9.]

Chapter 75.48

SALMON ENHANCEMENT FACILITIES BOND
ISSUE

Sections

75.48.010	Legislative finding.
75.48.020	Issuance of general obligation bonds authorized— Purpose—Use—Terms—Appropriation required.
75.48.030	Disposition of proceeds—Salmon enhancement con- struction account.
75.48.040	Administration of proceeds.
75.48.050	"Facilities" defined.
75.48.060	Form, terms, conditions, etc.
75.48.070	Anticipation notes—Authorized—Payment of principal and interest on bonds and notes.
75.48.080	Salmon enhancement construction bond retirement fund—Created—Purpose.
75.48.090	Annual report to legislature.
75.48.100	Availability of sufficient revenue required before bonds issued.
75.48.110	Bonds legal investment for public funds.

75.48.010 Legislative finding. The long range economic development goals for the state of Washington must include the restoration of salmon runs to provide an increased supply of this renewable resource for the benefit of commercial and recreational users and the economic well-being of the state. [1977 ex.s. c 308 § 1.]

75.48.020 Issuance of general obligation bonds authorized—Purpose—Use—Terms—Appropriation required. For the purpose of providing funds for the planning, acquisition, construction, and improvement of salmon hatcheries, other salmon propagation facilities including natural production sites, and necessary supporting facilities within the state, the state finance committee is authorized to issue, at any time prior to January 1, 1985, general obligation bonds of the state of Washington in the sum of thirty-one million five hundred thousand dollars or so much thereof as may be required to finance the improvements defined in this chapter and all costs incidental thereto. These bonds shall be paid and discharged within thirty years. No bonds authorized by this chapter shall be offered for sale without prior legislative appropriation of the proceeds of such bonds to be sold. [1977 ex.s. c 308 § 2.]

75.48.030 Disposition of proceeds—Salmon enhancement construction account. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the salmon enhancement construction account hereby created in the general fund and shall be used exclusively for the purpose specified in this chapter and for payment of the expenses incurred in the issuance and sale of the bonds. [1977 ex.s. c 308 § 3.]

75.48.040 Administration of proceeds. The proceeds from the sale of the bonds deposited in the salmon enhancement construction account of the general fund under the terms of this chapter shall be administered by the state department of fisheries subject to legislative appropriation. [1977 ex.s. c 308 § 4.]

75.48.050 "Facilities" defined. As used in this chapter, the term "facilities" means salmon propagation facilities including, but not limited to, all equipment, utilities, structures, real property, and interests in and improvements on real property, as well as stream bed clearing, for or incidental to the acquisition, construction, or development of salmon propagation facilities. [1977 ex.s. c 308 § 5.]

75.48.060 Form, terms, conditions, etc. The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. None of the bonds authorized in this chapter shall be sold for less than their par value. [1977 ex.s. c 308 § 6.]

75.48.070 Anticipation notes—Authorized—Payment of principal and interest on bonds and notes. When the state finance committee has decided to issue such bonds or a portion thereof, it may, pending the issuing of such bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of such bonds, which notes shall be designated as "anticipation notes". Such portion of the proceeds of the sale of such bonds as may be required for such purpose shall be applied to the payment of the principal of and interest on such anticipation notes which have been issued. The bonds and notes shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal and interest when due. The state finance committee may authorize the use of a printed facsimile of the seal of the state of Washington in the issuance of the bonds and notes. [1977 ex.s. c 308 § 7.]

75.48.080 Salmon enhancement construction bond retirement fund—Created—Purpose. The salmon enhancement construction bond retirement fund is created in the state treasury. This fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on such bonds. Not less than thirty days prior to the date on which any such interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the salmon enhancement construction bond retirement fund an amount equal to the amount certified by the state finance committee to be due on such payment date. The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed herein. [1977 ex.s. c 308 § 8.]

75.48.090 Annual report to legislature. The director of the department of fisheries shall report to the legislature on or before January 1 of each year on the revenues received from the sport and commercial salmon license

sales and from salmon privilege taxes for the previous fiscal year and estimates of the revenues to be received for the current and ensuing fiscal years.

The report shall also include the estimates of the amounts required from these revenues for the payment of principal and interest on the bonds authorized by this chapter and proposals for the use of any remaining revenues for salmon enhancement purposes. The report shall also include a progress report on the current salmon enhancement programs.

The report shall be given to the following standing committees: the house committee on appropriations, the senate committee on ways and means, and the house and senate committees on natural resources. [1977 ex.s. c 308 § 9.]

75.48.100 Availability of sufficient revenue required before bonds issued. The bonds authorized by this chapter shall be issued only after the director of the department of fisheries has certified, based upon reasonable estimates and data provided to the department, that sufficient revenues will be available from sport and commercial salmon license sales and from salmon fees and taxes to meet the requirements of RCW 75.48.080 during the life of the bonds. [1977 ex.s. c 308 § 10.]

75.48.110 Bonds legal investment for public funds. The bonds authorized in this chapter shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1977 ex.s. c 308 § 11.]

Chapter 75.98 CONSTRUCTION

Sections

75.98.010	Continuation of existing law.
75.98.020	Title, chapter, section headings not part of law.
75.98.030	Invalidity of part of title not to affect remainder.
75.98.040	Construction of certain sections.
75.98.050	Repeals and savings.
75.98.060	Emergency—1955 c 12.

75.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1955 c 12 § 75.98.010.]

75.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1955 c 12 § 75.98.020.]

75.98.030 Invalidation of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1955 c 12 § 75.98.030.]

75.98.040 Construction of certain sections. Nothing in RCW 75.08.014, 75.08.025, 75.08.203, 75.08.206, 75.28.020, 75.28.030, *75.28.080, **75.28.195, 75.28.300(4), 75.28.370, 75.32.030, and 75.32.080 shall be construed to restrict or impair the authority of the director of fisheries consistent with and pursuant to the provisions thereof from issuing and publishing such regulations as, after investigation, he may deem necessary to administer said sections and to effectuate their purposes, or to administer and effectuate all other acts governing or affecting the department of fisheries, nor shall anything herein be construed to restrict or impair the authority of the director to issue and publish regulations he may find necessary under the provisions of the Pacific marine fisheries compact. [1979 c 66 § 3; 1955 c 12 § 75.98.040.]

Reviser's note: *(1) RCW 75.28.080 was repealed by 1965 ex.s. c 73 § 18.

** (2) RCW 75.28.195 was repealed by 1959 c 309 § 27.

Severability—1955: "The several provisions of this act are hereby declared to be separate and severable and if any clause, sentence, paragraph, subdivision, section or part thereof shall, for any reason, be adjudged invalid, or the applicability thereof to any person, circumstance or product adjudged invalid, such judgment shall not affect, impair or invalidate the remainder of the act, and the applicability thereof to other persons, circumstances or products shall not thereby be affected, but such judgment, if any, shall be confined in its operation to the particular clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered." [(i) 1955 c 212 § 15. (ii) 1955 c 276 § 5.] This applies to RCW 75.08.040, 75.12.140, 75.12.150, 75.12.160, 75.24.090, 75.28.040, 75.28.060, 75.28.090, 75.28.255, 75.28.280, 75.28.281, 75.28.282, 75.28.300, 75.32.030 and 75.32.051.

75.98.050 Repeals and savings. The following acts or parts of acts are repealed:

- (1) Chapter 9, Laws of 1949;
- (2) Chapter 107, Laws of 1949;
- (3) Chapter 99, Laws of 1949;
- (4) Sections 1, 2, 6, 7, 8, 10, 13 through 23, and 25 through 87, chapter 112, Laws of 1949;
- (5) Sections 1 through 38, 42 through 45, and 47 through 49, chapter 271, Laws of 1951;
- (6) Chapter 7, Laws of 1951, 1st extraordinary session;
- (7) Chapter 147, Laws of 1953;
- (8) Sections 1 through 9, 11, and 15 through 18, chapter 207, Laws of 1953.

Such repeals shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor any rule, regulation or order adopted pursuant thereto, nor as affecting any proceeding instituted thereunder. [1955 c 12 § 75.98.050.]

75.98.060 Emergency—1955 c 12. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1955 c 12 § 75.98.060.]

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.01 General provisions.
- 76.04 Forest protection.
- 76.06 Forest insect and disease control.
- 76.09 Forest practices.
- 76.10 Surface mining.
- 76.12 Reforestation.
- 76.14 Forest rehabilitation.
- 76.16 Access to state timber and other valuable material.
- 76.20 Firewood on state lands.
- 76.24 Toll logging roads.
- 76.28 Boom companies.
- 76.32 Log driving companies.
- 76.36 Marks and brands.
- 76.40 Log patrols.
- 76.42 Wood debris—Removal from navigable waters.
- 76.44 Institute of forest resources.
- 76.48 Specialized forest products.
- 76.52 Cooperative forest management services act.

Reviser's note: The powers and duties of most of the public agencies mentioned in Title 76 RCW have been transferred, at least in part, to the department of natural resources, see chapter 43.30 RCW (chapter 38, Laws of 1957). The purpose of said chapter, as provided in RCW 43.30.010, is "to provide for more effective and efficient management of the forest and land resources in the state by consolidating into a department of natural resources certain powers, duties and functions of the division of forestry of the department of conservation and development, the board of state land commissioners, the state forest board, all state sustained yield forest committees, director of conservation and development, state capitol committee, director of licenses, secretary of state, tax commission and commissioner of public lands."

The division of forestry of the department of conservation and development, the board of state land commissioners, the state forest board and the state sustained yield forest committees were abolished in 1957; see RCW 43.30.070 (1957 c 38 § 7).

The state board of forest commissioners and the state forester and fire warden were abolished in 1921 and their powers and duties were transferred to the division of forestry of the department of conservation and development (see (1) 1921 c 7 §§ 1, 61, 62, 67 and 135; (2) 1921 c 64 § 3; and (3) 1921 c 102 § 4); thence to the department of natural resources as above indicated.

Access roads to public and state forest lands: Chapter 79.38 RCW.

Cascara bark peeling: Chapter 19.08 RCW.

County timber: Chapter 36.34 RCW.

Easements over public lands: RCW 79.01.312 through 79.01.336 and 79.36.230 through 79.36.290.

Exchange of lands to facilitate marketing of forest products or to consolidate state lands: RCW 79.08.180 through 79.08.200.

Excise tax on conveyance of standing timber: Chapter 28A.45 RCW.

Fireworks: Chapter 70.77 RCW.

Forest management, major line at state universities: RCW 28B.10-.115, 28B.20.060.

Forest roads, county: RCW 36.82.140.

Industrial safety and health: Chapter 47.17 RCW.

Lien for labor and services on timber and lumber: Chapter 60.24 RCW.

Limitation on liability of forest landowner for injuries to recreation users: RCW 4.24.210.

Logging railroads: Title 81 RCW.

Logging trucks, special permits for use of roads and highways: RCW 46.44.047.

Logs on county highways and bridges: RCW 36.86.090.

Measurement of timber and wood products, fraud, penalty: RCW 9.45.122-9.45.126.

Motor vehicle size, weight and load: Chapter 46.44 RCW.

National forests

jurisdiction: Chapter 37.08 RCW.

proceeds of sales of and earnings from to current state school fund: RCW 28A.41.030.

Pest control compact: Chapter 17.34 RCW.

Reservation of timber on sale of county tax-title lands: RCW 84.64.270 through 84.64.290.

Safety supervisor: RCW 43.22.040.

Sustained yield plan and cooperative agreements: Chapters 79.56 and 79.60 RCW.

Taxation and/or assessment of lands lying both within fire protection district and forest protection assessment area: RCW 52.16.170.

Taxation of reforestation lands: Chapter 84.28 RCW.

Transportation of forest products, applicability of public utility tax: RCW 82.16.020.

University demonstration forest and experiment station: RCW 79.08.070.

Washington pesticide application act; applicability of to forest lands: RCW 17.21.210.

Weather modification and control: Chapter 43.27A RCW.

Chapter 76.01 GENERAL PROVISIONS

Sections

- 76.01.010 Sale of other than state forest lands.
- 76.01.020 Sale of other than state forest lands—Procedure.
- 76.01.030 Sale of other than state forest lands—Disposition of revenue.
- 76.01.040 Federal funds for management and protection of forests, forest and range lands.
- 76.01.050 Federal funds for management and protection of forests, forest and range lands—Disbursement of funds.
- 76.01.060 Right of entry in course of duty by representatives of department of natural resources.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.01.010 Sale of other than state forest lands. The director of conservation and development with the approval of the state forestry board is hereby authorized to sell any real property not designated or acquired as state forest lands, but acquired by the state, either in the name of the forest board, the forestry board, or the division of forestry, for administrative sites, lien foreclosures

or other purposes whenever he shall determine that said lands are no longer or not necessary for public use. [1955 c 121 § 1.]

76.01.020 Sale of other than state forest lands—
Procedure. The sale may be made after public notice to the highest bidder for such a price as shall be approved by the governor, but not less than the fair market value of the real property, plus the value of improvements thereon. Any instruments necessary to convey title shall be executed by the governor in form approved by the attorney general. [1955 c 121 § 2.]

76.01.030 Sale of other than state forest lands—
Disposition of revenue. All amounts received from the sale shall be credited to the fund of the department of government responsible for the acquisition and maintenance of the property sold. [1955 c 121 § 3.]

76.01.040 Federal funds for management and protection of forests, forest and range lands. The division of forestry of the department of conservation and development upon the approval of the director of the department of conservation and development, is hereby authorized to receive funds from the federal government for cooperative work in management and protection of forests and forest and range lands as may be authorized by any act of Congress which is now, or may hereafter be, adopted for such purposes. [1957 c 78 § 1.]

76.01.050 Federal funds for management and protection of forests, forest and range lands—Disbursement of funds. The division of forestry is hereby authorized to disburse such funds, together with any funds which may be appropriated or contributed from any source for such purposes, on management and protection of forests and forest and range lands. [1957 c 78 § 2.]

76.01.060 Right of entry in course of duty by representatives of department of natural resources. Any authorized assistants, employees, agents, appointees or representatives of the department of natural resources may, in the course of their inspection and enforcement duties as provided for in chapters 76.04, 76.06, *76.08, 76.16, 76.36 and 76.40 RCW, enter upon any lands, real estate, waters or premises except the dwelling house or appurtenant buildings in this state whether public or private and remain thereon while performing such duties. Similar entry by the department of natural resources may be made for the purpose of making examinations, locations, surveys and/or appraisals of all lands under the management and jurisdiction of the department of natural resources; or for making examinations, appraisals and, after five days' written notice to the landowner, making surveys for the purpose of possible acquisition of property to provide public access to public lands. In no event other than an emergency such as fire fighting shall motor vehicles be used to cross a field customarily cultivated, without prior consent of the owner. None of the entries herein provided for shall constitute trespass, but nothing contained herein shall

limit or diminish any liability which would otherwise exist as a result of the acts or omissions of said department or its representatives. [1971 ex.s. c 49 § 1; 1963 c 100 § 1.]

*Reviser's note: Chapter 76.08 RCW was repealed by 1974 ex.s. c 137 § 34.

Chapter 76.04 FOREST PROTECTION

Sections

76.04.010	Definitions.
76.04.020	General duties of director.
76.04.030	Transfer of powers and duties—Federal funds.
76.04.050	Duties of supervisor—Forest assistants.
76.04.060	Wardens—Appointment—Duties— Compensation.
76.04.070	Further duties of wardens.
76.04.080	Rangers—Appointment—Ex officio rangers— Compensation.
76.04.090	Duty of prosecuting attorney—Magistrate— Penalties.
76.04.100	Service of notices.
76.04.110	Arrests without warrant.
76.04.120	Rules and regulations—Penalty for violations.
76.04.130	Disposition of fines.
76.04.140	Regions of extra fire hazard—Designation— Penalty.
76.04.150	Closed season—Permits.
76.04.170	Burning waste forest material—Permit.
76.04.180	Supervised burning—Fire fighting—Employ- ment—Penalty for refusing assistance.
76.04.190	Closure of forest operation—Penalty.
76.04.200	Suspension of burning permits and hunting privileges.
76.04.210	Penalties for setting fires or removing notices.
76.04.220	Wilful or negligent fires—Fire fighting—Refusal to aid—Penalty.
76.04.222	Certain snags to be felled currently with logging.
76.04.240	Burning mill wood waste—Arresters.
76.04.242	Dumping mill waste, forest debris—Prohibited— Penalty.
76.04.245	Blasting fuse regulations—Penalty.
76.04.251	Steam, internal combustion or electric engines and other spark emitting equipment regulated.
76.04.252	Closed season.
76.04.270	Penalty for violations—Work stoppage notice.
76.04.273	Unauthorized entry into sealed tool box—Penalty.
76.04.275	Power driven machinery—Permits.
76.04.277	Power driven machinery—Penalty.
76.04.280	Deposit of fire or live coals.
76.04.290	Reports of fires by carriers.
76.04.300	Lighted cigars, etc.—Receptacles in convey- ances—Penalty.
76.04.310	Disposal of forest debris—Permission to allow trees to fall on another's land.
76.04.340	Destruction of forests—Penalty.
76.04.350	Owners to protect forests.
76.04.360	Fire patrol assessments—Lien—Supervisor's bond.
76.04.370	Additional fire hazards—Extreme fire hazard ar- eas—Abatement, isolation or reduction—Sum- mary action—Recovery of costs.
76.04.380	Uncontrolled fire a public nuisance—Suppres- sion—Duties—Summary action—Recovery of costs.
76.04.385	Reimbursement for costs of suppression action.
76.04.390	Negligent starting of fires—Permitting existence of extreme fire hazard or forest debris—Liability for costs—Recovery.
76.04.395	Permitting spread of fire—Penalty.
76.04.397	Cutting or destroying trees without authority— Penalty.
76.04.400	Cooperative protection.

76.04.410	Contracts for protection and development.
76.04.420	Corporations may contract with state.
76.04.430	Articles of incorporation—Requirements.
76.04.440	Requisites of contracts.
76.04.480	Olympic peninsula area protection—Penalty for violation of rules.
76.04.490	Clarke-McNary fund.
76.04.500	Cooperative farm forestry funds.
76.04.510	State funds—Loans—Recovery of funds from the landowner contingency fire suppression account.
76.04.515	Landowner contingency forest fire suppression account.
76.04.520	Forest fire advisory board.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

Board of state land commissioners abolished: RCW 43.30.070.

Burning permits within fire protection districts: RCW 52.28.010.

Christmas trees—Cutting, breaking, removing: RCW 79.40.070 and 79.40.080.

Excessive steam in boilers, penalty: RCW 70.54.080.

Pest control compact: Chapter 17.34 RCW.

Steam boilers and pressure vessels, construction, installation, inspection and certification: Chapter 70.79 RCW.

Treble damages for removal of trees: RCW 64.12.030 and 79.01.756.

76.04.010 Definitions. As used in this chapter:

"Additional fire hazard" means a condition of forest land resulting from the existence of forest debris so located and in such amounts and flammability as to readily support, intensify and/or continue the spread of fire beyond the spread that would occur in the absence of such debris or if the debris had been abated in a manner approved by the department of natural resources;

"Department" means the department of natural resources or its authorized representatives;

"Director" means the director of conservation and development as that term occurred in pre-1957 law and means the department in all subsequent law;

"Supervisor" means the supervisor of forestry as that term occurred in pre-1957 law and means the department in all subsequent law;

"Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of men, rental of equipment, and purchase of supplies over and above costs regularly budgeted and provided for nonemergency fire expenses for the biennium in which such costs occur;

"Forest debris" includes forest slashing, chopping, and any other vegetative residue resulting from activities on forest land;

"Forest fire service" includes all wardens, rangers, and other help employed especially for preventing or fighting forest fires;

"Forest land" means any land which has enough timber, standing or down, or flammable material, to constitute in the judgment of the department a fire menace to life or property: *Provided*, That sagebrush and grass areas east of the summit of the Cascade mountains are not included unless such areas are adjacent to or intermingled with areas supporting tree growth;

"Forest landowner", "owner of forest land", "landowner", or "owner" means the owner or the person in possession of any public or private forest land defined in this section;

"Forest material" means forest slashing, chopping, woodland, or brushland;

"Landowner operation" means every activity, and supporting activities, of a forest landowner, his agents, employees, or independent contractors or permittees therewith in the management and use of forest land for the primary benefit of the owner. Such activities may include, but are not limited to, the growing and harvesting of forest products, development of transportation systems, utilization of mineral or other natural resources, disposing of forest debris, and the clearing of land: *Provided*, That recreational and/or residential activities not associated with the above shall not be included;

"Participating landowner" means an owner of forest land, which land is subject to the forest patrol assessment provided in RCW 76.04.360 as now or hereafter amended;

"Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or deemed by the department of natural resources to pose no further threat to life or property. [1977 ex.s. c 102 § 2; 1971 ex.s. c 207 § 1; 1951 c 58 § 1. Prior: (i) 1911 c 125 § 1; RRS § 5781. (ii) 1911 c 125 § 4, part; RRS § 5784, part. (iii) 1917 c 105 § 6; RRS § 5809.]

Reviser's note: Compare the definition of "Forest fire service" in this section with the definition in RCW 76.04.050.

Construction—1971 ex.s. c 207: "Nothing in this 1971 amendatory act shall be construed to repeal, affect, or limit either directly, indirectly, or by implication any claims or liability for costs incurred by the department or others prior to the effective date of this 1971 amendatory act." [1971 ex.s. c 207 § 18.] This applies to RCW 76.04.385, 76.04.515, 76.04.520, to the 1971 amendments to RCW 76.04.010, 76.04.180, 76.04.310, 76.04.360, 76.04.370, 76.04.380, 76.04.390, 76.04.510, 76.08.010, 76.08.050, 76.08.060, and to the repeal of RCW 76.04.040 and 76.04.230.

Severability—1951 c 58: "If any section, subdivision, sentence or clause in this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of the act." [1951 c 58 § 11.]

76.04.020 General duties of director. The board shall supervise all matters of forest policy and forest management under the jurisdiction of the state, and shall have power to authorize all needful and proper expenditures for forest protection; it shall have full power to appoint a forester; to make rules and regulations for the prevention, control and suppression of forest fires as it deems necessary; to regulate and control the official acts of the forester, his assistants, the wardens, and the rangers, and to remove at will any of these officials. It shall be the duty of the board to collect information regarding the timber lands owned by the state, through investigation made by the forester, his assistants, the wardens and the rangers regarding the condition of the timber lands belonging to the state, the investigation to include any damage caused by forest fires, and any illegal cutting, or trespassing upon the state timber lands.

The board is hereby authorized, when in its judgment it appears advisable, to accept on behalf of the state, any grant of land within the state, which shall then become a part of the state forests: *Provided*, That no grant shall be accepted until the title has been examined and approved

by the attorney general of the state and a report made to the board of the result of such examination. [1911 c 125 § 2; RRS § 5782. Prior: 1905 c 164 § 2; 1903 c 114 § 5.]

Reviser's note: "board" refers to the state board of forest commissioners; "forester" refers to the state forester and fire warden. Both the "board" and "forester" were abolished by 1921 c 7 § 135. Their powers and duties have devolved upon the department of natural resources through a chain of statutes as follows:

(1) 1905 c 164 §§ 1-3; (2) 1921 c 7 §§ 1, 61, 62, 67; (3) 1921 c 102 § 4; (4) 1957 c 38 §§ 1, 3, 7, 8 (RCW 43.30.010, 43.30.030, 43.30.070 and 43.30.080).

76.04.030 Transfer of powers and duties—Federal funds. The director of conservation and development, through and by means of the division of forestry, shall, upon his appointment, qualification and assumption of the duties of his office, exercise all the powers and perform all the duties vested in, and required by *this act to be performed by either the state forester and fire warden or the state board of forest commissioners. The director of conservation and development shall have the power and authority and it shall be his duty to receive, and disburse through and by means of the division of forestry, any and all moneys contributed, allotted or paid by the United States under the authority of any act of congress for use in cooperation with the state of Washington in protecting and developing forests. [1921 c 102 § 4 (adding a new section to 1911 c 125, section 23); RRS § 5802.]

Reviser's note: (1) For further devolution of the powers and duties referred to herein see note following Title 76 RCW digest.

* (2) "this act" first appears in 1921 c 102 § 4 adding a new section to 1911 c 125 which latter act as amended was codified as RCW 76.04.010 through 76.04.090, 76.04.110, 76.04.130, 76.04.150, 76.04.180, 76.04.200, 76.04.210, 76.04.250 through 76.04.270, 76.04.280, 76.04.310 and 76.04.320.

76.04.050 Duties of supervisor—Forest assistants. The forester may at his discretion, subject to the approval of the board, appoint trained forest assistants, possessing technical qualifications, and may employ necessary clerical assistants, and fix the amount of their respective salaries, which shall be payable in equal monthly installments to each assistant so appointed or employed.

He shall act as secretary of the board, or he may delegate that duty to one of his assistants. He shall, acting under the supervision of the board, and whenever he may deem it necessary to the best interests of the state, cooperate in forest surveys, in forest studies, in forest products studies, in forest fire fighting and patrol, and in the preparation of plans for the protection, management, replacement of trees, wood lots, and timber tracts, with any of the several departments of the governments of other states, and with the government or with the departments of the government of the United States with the Dominion of Canada, or with any province thereof, and with counties, towns, corporations, and individuals within the state of Washington.

He shall, subject to the rules and regulations of the board, have direct charge and supervision of all matters pertaining to forestry, including the forest fire service of the state.

The term "forest fire service" as used in *this act shall be held to include all wardens, rangers and help especially employed for preventing or fighting forest fires.

In times of emergency or unusual danger the forester is empowered to mass the forest fire service of the state where its presence might be required by reason of forest fires, and to take charge of, and direct the work of suppressing such fires.

The forester shall enforce all laws for the preservation of the forests within the state, investigate the origin of all forest fires, and vigorously prosecute all violators of *this act.

The forester may, with the approval of the board, publish for free distribution, information pertaining to forestry, and to forest products, which he may consider of benefit to the people of the state.

The forester shall furnish notices calling attention to the dangers from forest fires, and to the penalties for the violation of *this act; such notices to be posted in conspicuous places by the wardens or rangers in all timbered districts along roads and trails, streams and lakes, frequented by tourists, campers, hunters and fishermen, and in other visited regions.

The forester shall, subject to the approval of the board, prepare all necessary printed forms for use of wardens and rangers, in connection with the granting of applications for permits to burn; for the appointment of wardens and rangers, and any and all forms or blanks required or desirable, and shall supply each warden and ranger with such forms and blanks.

The forester shall become familiar with the location and the areas of all state timbered and cut-over lands, and shall prepare maps of each of the timbered counties showing the state land therein, and in all ways that are practical and feasible protect such lands from the dangers of fire, trespass, and the illegal cutting of timber, reporting from time to time direct to the board such information as may be of benefit to the state in the care and protection of its timber.

It shall be the duty of the forester to institute inquiry into the extent, kind, value and condition of all timber lands within the state; the amount of acres, and the value of the timber that is cut and removed each year, to determine what state lands are chiefly valuable for growing timber; the extent to which timber lands are being destroyed by fire; and also to examine into the production, quality and quantity of second growth timber, with a view to ascertaining conditions for reforestation. [1977 c 75 § 88; 1911 c 125 § 4; RRS § 5784. Prior: 1905 c 164 § 4; 1903 c 114 § 8. Formerly RCW 76.04.010, part, and 76.04.050.]

Reviser's note: (1) The 1941 Code Committee divided and codified this section as RCW 76.04.050 and 76.04.010 which latter section was subsequently amended by 1951 c 58 § 1. In particular the definition of "forest fire service" contained herein should be compared with the definition in RCW 76.04.010.

* (2) "this act" refers to 1911 c 125 which act as amended was codified as RCW 76.04.010 through 76.04.090, 76.04.110, 76.04.130, 76.04.150, 76.04.180, 76.04.200, 76.04.210, 76.04.250 through 76.04.270, 76.04.280, 76.04.310, and 76.04.320.

(3) "board", "forester", see note following RCW 76.04.020.

76.04.060 Wardens—Appointment—Duties—Compensation. The state supervisor of forestry shall, subject to the approval of the director of the department of conservation and development, have power to appoint within any region or district in this state where there is timber requiring protection, one or more wardens for all or any portion of the period during which the said supervisor deems that forest fire dangers exist.

The said supervisor may, subject to the approval of the said director, and at such times and in such localities as he deems the public welfare demands, employ one or more wardens whose duty it shall be to examine deforested lands of the state, and ascertain if such lands are chiefly valuable for agriculture, or if they are chiefly valuable for timber growing, with a view to reforestation. The said wardens, shall, under the direction of the said supervisor engage in the discovery of inflammable materials, and cause, or assist in the burning of such material at such times as the burning can be done with a minimum of danger to adjacent timber, or other property. The said wardens, under the direction of the said supervisor, shall report any trespass and illegal cutting upon state timber lands, coming to his notice, and report the same to the state land commissioner.

The said supervisor shall have power to temporarily suspend any warden or ranger who may be incompetent or unwilling to discharge properly the duties of his office, and to appoint his successor temporarily, until his action shall be passed upon by the said director.

The wardens shall make their headquarters at such place as the said supervisor shall determine, and upon request of said supervisor to the county commissioners of any county, such wardens shall be furnished with suitably equipped office quarters in the county court house, said quarters to be designated by said county commissioners.

The authority of the wardens respecting the prevention, suppression and control of forest fires, summoning, impressing or employing help, or making arrests for the violation of *this act, may extend to any part of the state.

The salaries and necessary expenses of all wardens, together with all wages and expenses incurred for help and assistance in forest fire protection shall be fixed by the said director, the wages and salaries to be based on but not to exceed going wages and salaries for similar work.

All accounts of the wardens shall be submitted to the said supervisor, as well as all bills for forest fire protection authorized by the wardens.

All wardens and rangers shall render reports to the said supervisor on such blanks or forms, or in such manner, and at such times as may be ordered, giving a summary of how employed, the area of county visited, expenses incurred, and such other information as may be called for by the said supervisor. [1937 c 97 § 1; 1923 c 184 § 2; 1921 c 102 § 1; 1911 c 125 § 5; RRS § 5785. Prior: 1905 c 164 § 5.]

*Reviser's note: "this act", see note following RCW 76.04.050.

76.04.070 Further duties of wardens. Each warden shall be at all times under the direction and control of

the supervisor of forestry, and shall perform such other duties at such times and places as he may direct.

It shall be the duty of wardens to post over the forest areas notices of warning giving the date of the closed season as provided for in RCW 76.04.150, and copies of all such laws and rules as they may be directed to post by the supervisor of forestry.

They shall investigate all fires and report all of a serious or threatening character to the supervisor of forestry immediately. They shall patrol their districts; visit all parts of roads and trails, and frequented places and camps as far as possible, warn campers or other users of fire, see that all locomotives are provided with spark arresters, and with adequate devices for preventing the escape of fire or live coals from ash pans and fire boxes, in accordance with the law; extinguish small or smouldering fires, and set back-fires to control fires; summon, impress and employ help in controlling fires, and see that all laws for the protection of forests are enforced, and arrest and cause to be prosecuted all offenders. [1933 c 68 § 1; 1911 c 125 § 6; RRS § 5786. Prior: 1905 c 164 § 6.]

76.04.080 Rangers—Appointment—Ex officio rangers—Compensation. All state land cruisers, all game wardens, road supervisors and state highway patrolmen, when approved by the state supervisor of forestry, and all rangers and assistant rangers of the United States forest service, when recommended by their forest supervisors, and commissioned by the state supervisor of forestry shall be ex officio rangers.

Timber cruisers and citizens of the state advantageously located may, at the discretion of the said supervisor, be appointed rangers and vested with the powers and duties of wardens.

Rangers shall receive no compensation for their services except when employed in cooperation with the state and under the provisions of *this act, and shall not create any indebtedness, or incur any liability on behalf of the state: *Provided*, That rangers actually engaged in extinguishing, or preventing the spread of fire in brush, slashings, choppings, timber or elsewhere that may endanger timber or other property, shall when their accounts for such service have been approved by the fire wardens in authority, be entitled to receive compensation for such services at a rate to be fixed by the director of the department of conservation and development. [1925 ex.s. c 43 § 2; 1923 c 184 § 3; 1917 c 33 § 1; 1911 c 125 § 7; RRS § 5787. Prior: 1905 c 164 § 7.]

*Reviser's note: "this act", see note following RCW 76.04.050.

76.04.090 Duty of prosecuting attorney—Magistrate—Penalties. Whenever an arrest shall have been made for a violation of any of the provisions of *this act or whenever information of such violation shall have been lodged with him, the prosecuting attorney of the county in which the criminal act was committed, shall prosecute the offender or offenders, with all diligence and energy. If any prosecuting attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than five hundred

dollars, and by imprisonment of not less than thirty days, nor more than one year in the county jail. The penalties of this section shall apply to any magistrate, with proper authority, who refuses or neglects to cause the arrest and prosecution of any person or persons when complaint under oath of violation of any provisions of this act has been lodged with him. [1911 c 125 § 20; RRS § 5800. Prior: 1905 c 164 § 11.]

*Reviser's note: "this act", see note following RCW 76.04.050.

76.04.100 Service of notices. Any notice required by *this or other acts to be served by a forest officer shall be sufficient if a written or printed copy thereof is delivered, mailed or telegraphed by a forest officer to the person to receive notice or to his responsible agent, or, in case the name or address of such person or agent is unknown to the officers and cannot be obtained by reasonable diligence, by posting such copy in a conspicuous place upon the premises concerned by this notice. [1917 c 105 § 7; RRS § 5810.]

*Reviser's note: "this act" appears in 1917 c 105 codified as RCW 76.04.010, 76.04.100, 76.04.350 through 76.04.380 and 76.04.400.

76.04.110 Arrests without warrant. The forester, his assistants, wardens, rangers, and all police officers are hereby empowered to make arrests without warrant of persons violating *this act. [1911 c 125 § 19; RRS § 5799.]

Reviser's note: *(1) "this act", see note following RCW 76.04.050.
(2) "forester", see note following RCW 76.04.020.

76.04.120 Rules and regulations—Penalty for violations. Any person who shall wilfully violate any of the orders, rules or regulations made by the department in accordance with the authority granted by the provisions of chapter 76.04 RCW for the protection of forests from fires, shall be guilty of a misdemeanor. [1979 1st ex.s. c 8 § 2; 1923 c 184 § 11, part; RRS § 5811-1.]

76.04.130 Disposition of fines. All fines collected under *this act shall be paid into the county treasury of the county in which the offense was committed: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 32; 1911 c 125 § 21; RRS § 5801.]

*Reviser's note: "this act", see note following RCW 76.04.050.
Disposition of fines generally: Chapter 10.82 RCW.

76.04.140 Regions of extra fire hazard—Designation—Penalty. When, in the opinion of the director, any forest region is particularly exposed to fire danger, he may designate such region, defining the boundaries thereof by legal subdivisions or watercourses, watersheds, mountain ranges, or other natural monuments, as a region of extra fire hazard, and he shall promulgate rules and regulations for the protection thereof. All such rules and regulations shall be promulgated by publication in such newspapers of general circulation in the counties wherein such region is situated and for such

length of time as the director may determine. When in the opinion of the director it becomes necessary to close the area to entry, posters carrying the wording "Region of extra fire hazard—CLOSED TO ENTRY—except as provided by RCW 76.04.140" and indicating the beginning and ending dates of such closures shall be posted on the public highways entering such regions. The rules and regulations shall be in force from the time specified therein: *Provided*, That when in the opinion of the director such forest region continues to be exposed to fire danger, or ceases to be so exposed, the director may extend, suspend, or terminate the closure as previously promulgated by proclamation so declaring.

This chapter shall not, however, authorize the director to prohibit the conduct of industrial operations, public work, or access of permanent residents to their own property within the closed area: *Provided*, That no one legally entering the region of extra fire hazard will be permitted to use the area for recreational purposes which are prohibited to the general public under the terms of this section.

Anyone violating any such rules and regulations or order closing any forest region shall be guilty of a misdemeanor. [1957 c 111 § 4; 1953 c 24 § 1; 1925 ex.s. c 43 § 1; RRS § 5782-1.]

76.04.150 Closed season—Permits. Except in certain areas designated by the department of natural resources, or as permitted under rules and regulations promulgated by the department of natural resources, no one shall burn any inflammable material within any county in this state in which there is a warden or ranger during the period beginning the fifteenth day of March, and ending on the fifteenth day of October in each year in western Washington, or during the period beginning the fifteenth day of April and ending on the fifteenth day of October in eastern Washington, unless a different date for such beginning and ending is fixed by order of the department of natural resources, after a finding that such different dates are necessary for the protection of life and property, or air quality standards, without first obtaining permission in writing from the department of natural resources, any authorized employee thereof, or a warden, or ranger, and afterwards complying with the terms of said permit. However, if such fire is contained in a suitable device sufficient, in the opinion of the department of natural resources to prevent the fire from spreading, and such device complies with air pollution requirements as provided under chapter 70.94 RCW, said written permission will not be necessary under RCW 76.04.150 and 76.04.170.

The department of natural resources or authorized employees thereof, or any warden or ranger, may refuse, revoke, or postpone the use of permits to burn when such act is clearly necessary for the safety of adjacent property. They may also refuse, suspend, or revoke a permit authorized under this section when necessary in their judgment to prevent air pollution as provided for in chapter 70.94 RCW.

A person violating this section shall, upon conviction, be fined not less than twenty-five dollars nor more than five hundred dollars or be imprisoned in the county jail

not exceeding thirty days. Permission for burning shall be given only upon compliance with such rules and regulations as the department of natural resources shall prescribe, which shall be only such as the department of natural resources deems necessary for the protection of life or property, and air quality. [1971 ex.s. c 233 § 1; 1965 c 82 § 1; 1953 c 24 § 2; 1951 c 58 § 2; 1945 c 11 § 1; 1925 ex.s. c 43 § 3; 1921 c 102 § 2; 1911 c 125 § 8; Rem. Supp. 1945 § 5788. Prior: 1905 c 164 § 8; 1903 c 114 §§ 6, 7.]

76.04.170 Burning waste forest material—Permit. Anyone desiring to dispose of the refuse or waste forest material on or from forest lands, to reduce the potential danger of loss of life or property by burning during the period beginning the fifteenth day of March, and ending on the fifteenth day of October in each year in western Washington, or during the period beginning the fifteenth day of April and ending on the fifteenth day of October in eastern Washington, unless different dates for such beginning and ending are fixed by order of the department of natural resources after a finding that such different dates are necessary for the protection of life and property, or air quality, may make application to the department of natural resources, authorized employees thereof, or to any warden or ranger, for a permit so to do. The application shall state the location and extent of the area sought to be burned over, and by whom the burning is to be done. Upon receipt of an application the department of natural resources may inspect, or cause to be inspected the area described in the application and if satisfied that all requirements relating to fire fighting equipment, the work to be done or precautions to be taken before commencing such burning, have been complied with and that no unreasonable danger will result, and that the burning will be done at a time and in a manner so as to minimize reduction in air quality, the department of natural resources shall issue a permit.

The department of natural resources, authorized employees thereof, warden, or ranger may impose reasonable conditions in such permits for the protection of life, property, or air quality, and may suspend or revoke such permits when conditions warrant. A permit shall be effective only under the conditions and for the period stated therein. Compliance with the terms of the permit shall create a presumption of due care with respect to the starting and control of such fire. [1971 ex.s. c 233 § 2; 1955 c 142 § 1; 1929 c 207 § 1; 1927 c 223 § 1; RRS § 5788-1. Prior: 1905 c 164 § 8.]

Severability—1955 c 142: "If any section or part of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other sections or parts of this act or the application thereof, if it can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable and independent of any other provision of law." [1955 c 142 § 15.] This applies to RCW 76.04.170, 76.04.210, 76.04.223-76.04.230, 76.04.250-76.04.270, 76.04.320 and 76.04.360.

Burning permit within fire protection districts: RCW 52.28.010.

Burning permits for abating or prevention of forest fire hazards: RCW 70.94.660-70.94.700.

76.04.180 Supervised burning—Fire fighting—Employment—Penalty for refusing assistance. No one

shall burn any forest material or the waste or debris resulting from logging or land clearing operations until such work shall have been done in and around the slashing or chopping and/or the area proposed to be burned over to prevent the spread of fire therefrom as shall be required to be done by the state supervisor of forestry, or any warden or ranger. The said supervisor or any warden or ranger may require the cutting of such dry snags, stumps and dead trees within the area to be burned, which in his judgment constitute a menace or are likely to further the spread of fire therefrom.

When any person shall have obtained permission from the said supervisor, warden or ranger, to burn any slashings made for the purpose of clearing land, the warden may, at his discretion, furnish him with a man to supervise and control the burning, who shall represent and act for such warden, and shall have all the power and authority of a warden while engaged in such service, including the right to revoke such permit, if in his opinion the burning authorized would endanger any valuable timber or other property. Such a man shall serve only until such time as the party burning may be able to keep the fire under control himself.

The said supervisor and wardens are hereby authorized and empowered to employ a sufficient number of men to extinguish or prevent the spreading of any fires that may be in danger of destroying any valuable timber or other property of the state. The said supervisor, or any warden by special authority of the said supervisor, may provide needed tools and supplies, and transportation when necessary for men so employed.

Every man so employed, and also the representative of the warden supervising the burning, shall be entitled to compensation at a rate to be fixed by the director of the department of conservation and development, and the warden shall issue a certificate to each man so employed showing the number of hours worked by him and the amounts due to him, upon which, after approval by said supervisor, the men shall be entitled to receive payment from the state.

Any person refusing to render assistance when called upon by any warden, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars. [1971 ex.s. c 207 § 13; 1929 c 207 § 3; 1923 c 184 § 5; 1917 c 33 § 2; 1911 c 125 § 9; RRS § 5789.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

76.04.190 Closure of forest operation—Penalty. When in the opinion of the supervisor, weather conditions arise which present an extreme fire hazard, whereby life and property may be endangered by spreading forest fires, he may issue an order shutting down all logging, land clearing, or other industrial operations which may cause a forest fire to start, and such shutdown shall be for the periods and regions, designated in the order. During all such shutdowns, all persons are excluded from logging operating areas and areas of logging slashings, except those persons present in the interest of fire protection for the period of the

shutdown ordered by the state supervisor of forestry, or his authorized deputies.

Anyone violating any such order shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each violation, or by imprisonment for not less than thirty days in the county jail. Each day's violation shall constitute a separate offense. [1957 c 111 § 5; 1951 2nd ex.s. c 18 § 1; 1937 c 152 § 3; RRS § 5789-1.]

76.04.200 Suspension of burning permits and hunting privileges. In times and localities of unusual fire danger, the governor, with the advice of the forester, may suspend any or all permits or privileges authorized by RCW 76.04.150, and may prohibit absolutely the use of fire therein mentioned.

Whenever during an open season for the hunting of any kind of game within this state, it shall appear to the governor that by reason of extreme drought, the use of firearms or fire by hunters is liable to cause forest fires, he may by proclamation suspend the open season and make it a closed season for the shooting of wild birds or animals of any kind, for such time as he may designate, and during the time so designated all provisions of law relating to closed seasons for game shall be enforced. [1911 c 125 § 10; RRS § 5790.]

Reviser's note: The powers and duties of the governor referred to herein have devolved upon the department of natural resources through a chain of statutes as follows: (1) 1921 c 7 §§ 1, 68; (2) 1957 c 87 §§ 3, 7, 8.

76.04.210 Penalties for setting fires or removing notices. Any person who wilfully or needlessly defaces or removes any warning notice posted under the requirements of this chapter shall upon conviction be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense, or by imprisonment in the county jail not exceeding thirty days.

Any person who upon any land sets any fire, except at the proper places on camping grounds which have been prepared and designated as such by the supervisor or which have been approved by the supervisor, which fire shall spread and damage or destroy property of any kind not his own, or who starts any fire, except in a stove, upon any designated camp ground and, upon leaving the ground, fails to extinguish the fire, shall upon conviction be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. If the fire is set or left with intent to destroy property not his own, he shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or imprisonment in the county jail for not less than one month nor more than one year, or by both such fine and imprisonment.

During the period beginning the fifteenth day of March, and ending on the fifteenth day of October in each year in western Washington, or between the fifteenth day of April and the fifteenth day of October in eastern Washington, unless different dates for such beginning and ending are fixed by order of the supervisor of forestry after a finding that such different dates are necessary for the protection of life and property, any person who without a written permit kindles a fire, in or

dangerously near any forest material, except at the proper places on camping grounds as described above, or who is a party to kindling such fire, or who by throwing away any lighted cigar, cigarette, matches, or by use of firearms, or in any other manner starts a fire in forest materials, and who fails immediately to extinguish it, shall upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding two months. Nothing in this section shall absolve any person from liability on account of negligence.

The supervisor shall designate and prepare or approve such camping grounds as he may determine for the purpose of carrying out the provisions of this section. [1955 c 142 § 2; 1925 ex.s. c 43 § 4; 1921 c 102 § 3; 1911 c 125 § 11; RRS § 5791. Prior: 1905 c 164 § 9; 1903 c 114 § 10.]

76.04.220 Wilful or negligent fires—Fire fighting—Refusal to aid—Penalty. Every person who shall wilfully or negligently set, or fail to carefully guard or extinguish any fire, whether on his own land or the land of another, whereby the timber or property of another shall be endangered, or who shall fail to respond to any lawful summons to aid in guarding or extinguishing any fire, shall be guilty of a misdemeanor. [1909 c 249 § 271; RRS § 2523.]

Reviser's note: Caption for 1909 c 249 § 271 reads: "Sec. 271. Negligent fires."

76.04.222 Certain snags to be felled currently with logging. Standing dead trees constitute a substantial deterrent to effective fire control action in forest areas, but are also an important and essential habitat for many species of wildlife. To insure continued existence of these wildlife species and continued forest growth while minimizing the risk of destruction by conflagration, only certain snags must be felled currently with the logging. The department shall promulgate rules and regulations relating to effective fire control action to require that only certain snags be felled, taking into consideration the need to protect the wildlife habitat. [1979 1st ex.s. c 8 § 1; 1951 c 13 § 1.]

76.04.240 Burning mill wood waste—Arresters. It shall be unlawful for any one manufacturing lumber or shingles, or other forest products, to destroy wood waste material by burning the same at or near any mill situated within one-quarter of one mile of any forest material, without properly confining the place of said burning and without further safeguarding the surrounding property against danger from said burning by such additional devices as the forester may require.

It shall be unlawful for anyone to destroy any wood waste material by fire within any burner or destructor operated at or near any mill, and situated within one-quarter of one mile of any forest material, or to operate any power producing plant using in connection therewith any smokestack, chimney, or other spark emitting outlet, without installing and maintaining on such burner, or destructor, or on such smokestack, chimney or other

spark emitting outlet, a safe and suitable device for arresting sparks.

Anyone violating the provisions of this section shall upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each and every violation, or by imprisonment of not less than thirty days in the county jail. [1911 c 125 § 13; RRS § 5793.]

76.04.242 Dumping mill waste, forest debris—Prohibited—Penalty. No person shall dump mill waste from forest products or forest debris of any kind, in quantities that the department of natural resources declares to constitute a forest fire hazard, on or threatening forest lands located in this state, without first obtaining a written permit issued by the department of natural resources on such terms and conditions determined by the department pursuant to rules and regulations enacted to protect forest lands from fire. Said permits must be obtained in addition to any and all other permits required by law. Any person who dumps such mill waste, or forest debris without a required permit, or in violation of a permit shall be guilty of a gross misdemeanor and upon conviction shall be subject to a fine of not less than two hundred fifty dollars and not more than one thousand dollars, and may further be required to remove all materials dumped in violation of *this act. [1971 ex.s. c 134 § 3.]

*Reviser's note: "this act" [1971 ex.s. c 134] consists of this section, RCW 76.04.273 and to the 1971 amendment to RCW 76.04.251.

76.04.245 Blasting fuse regulations—Penalty. It shall be unlawful to use fuse for blasting on any area of logging slash or area of actual logging operation for the period of June fifteenth to October fifteenth. This period may be extended by the supervisor if hazardous weather conditions warrant. Any person violating the provisions of this section shall be guilty of a misdemeanor. Upon the issuance of a written permit by the supervisor or warden or ranger, fuse may be used during the closed season under the conditions specified in the permit. [1953 c 24 § 8.]

76.04.251 Steam, internal combustion or electric engines and other spark emitting equipment regulated. It shall be unlawful for anyone to operate during the closed season as defined in RCW 76.04.252, any steam, internal combustion, or electric engines, or any other spark emitting equipment or devices on any forest land or in any place where, in the opinion of the department, within reason, fire could be communicated to forest land, without first complying with the requirements as may be established by the department by rule or regulation pursuant to *this 1973 amendatory act.

The department of natural resources is authorized to promulgate rules and regulations relating to forest fire prevention and suppression preparedness, including the type, number, location and condition of fire equipment; the provision of water or other fire suppression agent, spark arresters, watchmen and/or patrols; the felling of snags; the clearing of flammable material from proximity to ignition sources; and the curtailment of operations

during periods of critical fire danger. The department may further provide for reasonable reductions of requirements so promulgated where operating conditions including, but not limited to, location or weather, would justify the same. [1973 1st ex.s. c 24 § 1; 1971 ex.s. c 134 § 1; 1965 ex.s. c 12 § 2.]

*Reviser's note: "this 1973 amendatory act" consists of amendments to RCW 76.04.251, 76.04.270, 76.04.385 and 76.04.515 and to the repeal of RCW 76.04.253–76.04.260 and 76.04.320 by 1973 1st ex.s. c 24.

Sections added—1965 ex.s. c 12: "There is added to chapter 76.04 RCW new sections to read as set forth in sections 2 through 8 of this act." [1965 ex.s. c 12 § 1.] This applies to RCW 76.04.251 through 76.04.257.

Severability—1965 ex.s. c 12: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1965 ex.s. c 12 § 11.] This applies to RCW 76.04.251 through 76.04.257, 76.04.260, 76.04.270 and to the repeal of RCW 76.04.250.

76.04.252 Closed season. The period April 15th to October 15th inclusive shall be known as the closed season, unless different dates are designated by the supervisor because of fire weather conditions prevailing. [1965 ex.s. c 12 § 3.]

76.04.270 Penalty for violations—Work stoppage notice. Every person upon receipt of written notice issued by the department that such person has or is violating any of the provisions of RCW 76.04.240, 76.04.245, 76.04.251, and 76.04.310, as amended, and/or any rule or regulation issued by the department concerning fire prevention and fire suppression preparedness shall cease such operations until the provisions of the sections or regulation specified in such notice have been complied with. The department may specify in the notice of violation the special conditions and precautions under which the operation would be allowed to continue until the end of that working day. Any person violating the statutory provisions above referenced, and as amended, or the rules or regulations issued by the department, or the written notice provided for herein, shall upon conviction be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. [1973 1st ex.s. c 24 § 2; 1965 ex.s. c 12 § 10; 1959 c 151 § 2; 1955 c 142 § 12. Prior: 1953 c 24 § 5; 1951 c 58 § 6; 1941 c 63 § 1, part; 1937 c 152 § 1, part; 1923 c 184 § 6, part; 1911 c 125 § 14, part; 1905 c 164 §§ 6, 10, part; Rem. Supp. 1941 § 5794, part.]

76.04.273 Unauthorized entry into sealed tool box—Penalty. Any unauthorized entry into a sealed tool box shall constitute a gross misdemeanor. [1971 ex.s. c 134 § 2.]

76.04.275 Power driven machinery—Permits. Any bona fide owner or operator of land before conducting a commercial operation in dead or down timber with power driven machinery shall be required to obtain from the supervisor of forestry a written operating permit. The provisions of this section and RCW 76.04.277 shall not apply to snag falling conducted for forest protection purposes.

To obtain such a permit the operator or owner must make a written application to the supervisor or to his authorized agent submitting a map showing the area to be logged, legal description and acreage. All permits shall expire at the end of each calendar year but shall be renewable for another year upon written application. [1953 c 18 § 1.]

76.04.277 Power driven machinery—Penalty. Every person violating RCW 76.04.275 shall be guilty of a misdemeanor and shall incur the penalties and prohibitions set forth in RCW 76.04.270. [1953 c 18 § 2.]

76.04.280 Deposit of fire or live coals. No one operating a railroad shall permit to be deposited by his, or its, employees, and no one shall deposit during the closed season, fire or live coals upon the right of way outside of the yard limits, and within one-quarter of one mile of any forest material, without such deposit of fire or live coals shall be immediately extinguished.

Anyone violating the provisions of this section respecting the deposit of fire or live coals, shall upon conviction pay a fine of not less than twenty-five dollars, nor more than one hundred dollars or be imprisoned in the county jail not exceeding thirty days.

Wardens and rangers shall report any lack of sufficient spark arresters, and any lack of adequate devices for preventing the escape of fire and live coals, as provided in *this act, to the forester, and to the prosecuting attorney of their county, and the superior court of that county where suit is first instituted, shall have jurisdiction of the offense. [1911 c 125 § 15; RRS § 5795.]

Reviser's note: *(1) "this act", see note following RCW 76.04.050.
(2) "forester", see note following RCW 76.04.020.

76.04.290 Reports of fires by carriers. Railroad companies and other public carriers, or any person or persons, operating through forested districts, must report forthwith by telephone or telegraph any fires on or adjacent to their right of way or route, to the local fire warden or to the office of the state supervisor of forestry. [1923 c 184 § 7; RRS § 5795-1.]

76.04.300 Lighted cigars, etc.—Receptacles in conveyances—Penalty. It shall be unlawful during the closed season, from April 15th to October 15th inclusive, for any person to throw away any lighted tobacco, cigars, cigarettes, matches, fireworks, or other lighted material in any forest, brush, range, or grain areas. It shall also be unlawful during the closed season for any individual to smoke when in forest or brush areas except on roads, cleared landings, gravel pits, or any similar area free of inflammable material.

Every conveyance operated through or above forest, brush, range, or grain areas, shall be equipped in each compartment with a suitable receptacle, for the disposition of lighted tobacco, cigars, cigarettes, matches, or other inflammable material. Every person operating a public conveyance through or above forest, range, or grain areas, shall post a copy of this section in a conspicuous place within the smoking compartment of the conveyance; and every person operating a saw mill, or a

logging camp in any such areas, shall post a copy of this section in a conspicuous place upon the ground or buildings of such milling or logging operation. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1957 c 111 § 8; 1953 c 24 § 6; 1931 c 89 § 1; 1925 ex.s. c 43 § 5; 1923 c 184 § 7, part; RRS § 5795-2.]

76.04.310 Disposal of forest debris—Permission to allow trees to fall on another's land. Everyone clearing land or clearing right of way for railroad, public highway, private road, ditch, dike, pipe or wire line, or for any other transmission, or transportation utility right of way, shall pile and burn or dispose of by other satisfactory means, all forest debris cut thereon, as rapidly as the clearing or cutting progresses, or at such other times as the department may specify, and if during the closed season, in compliance with the law requiring burning permits.

No one clearing any land or right of way, or in cutting or logging timber for any purpose, shall fell, or permit to be felled, any trees so that they may fall on to land owned by another without first obtaining permission from such owner in addition to complying with the terms of this section for the disposal of refuse. All the terms of this section and other forest laws of the state shall be observed in all clearings of right of way or other land on behalf of the state itself or any county thereof, either directly or by contract; and, unless unavoidable emergency prevents, provision shall be made by all officials directing such work for withholding a sufficient portion of the payment therefor until the disposal is completed, to insure the completion of the disposal in compliance with this section. [1971 ex.s. c 207 § 2; 1959 c 151 § 3; 1917 c 33 § 3; 1911 c 125 § 16; RRS § 5796.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Burning permits for prevention of forest fires: RCW 70.94.660.

76.04.340 Destruction of forests—Penalty. Any person or persons who shall wilfully and deliberately set fire to any forest within the state, or in any place from which fire may be communicated to any such forest, or who shall accidentally set fire to any such forest, or to any place from which fire may be communicated to any such forest, and shall not extinguish the same or use every effort to that end, or who shall build any fire for lawful purposes or otherwise in or near any such forest, and through carelessness or neglect shall permit said fire to extend to and burn through such forest, shall be deemed guilty of a misdemeanor, and on conviction before a court of competent jurisdiction shall be punishable by fine not exceeding one thousand dollars or imprisonment not exceeding one year, or by both such fine and imprisonment. [1923 c 184 § 9; RRS § 5803.]

76.04.350 Owners to protect forests. Every owner of forest land in the state of Washington shall furnish or provide therefor, during the season of the year when there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which

shall meet with the approval of the department of natural resources. [1977 ex.s. c 102 § 3; 1941 c 168 § 2; 1917 c 105 § 1; Rem. Supp. 1941 § 5804.]

76.04.360 Fire patrol assessments—Lien—Supervisor's bond. If any owner of forest land neglects or fails to provide adequate fire protection therefor as required by RCW 76.04.350, the department shall provide such protection therefor, notwithstanding the provisions of RCW 76.04.520, at a cost to the owner of not to exceed eighteen cents an acre per year on lands west of the summit of the Cascade mountains and fourteen cents an acre per year on lands east of the summit of the Cascade mountains.

For the purpose of chapter 76.04 RCW, the supervisor may divide the forest lands of the state, or any part thereof, into districts, for patrol and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Such cost must be justified by a showing of budgets on demand of twenty-five owners of forest land in the county concerned at public hearing. Any amounts paid or contracted to be paid by the supervisor of the department of natural resources for this purpose from any funds at his disposal shall be a lien upon the property patrolled and protected, and unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred, on which date the supervisor of the department of natural resources shall be prepared to make statement thereof upon request to any forest owner whose own protection has not been previously approved by him as adequate, shall be reported by the supervisor of the department of natural resources to the assessor of the county in which the property is situated who shall extend the amounts upon the tax rolls covering the property, or the county assessor may upon authorization from the supervisor of the department of natural resources levy the forest patrol assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records and the assessor may then segregate on his records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in chapter 52.04 RCW.

The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that the next general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the supervisor of the department of natural resources certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments the county treasurer shall transmit them to the supervisor of the department of natural resources to be applied against expenses incurred in carrying out the provisions of this section.

The supervisor of the department of natural resources shall include in the assessment a sum not to exceed one-half of one cent per acre, to cover the necessary and reasonable cost of office and clerical work incurred in the enforcement of these provisions. He may also expend

any sums collected from owners of forest lands or received from any other source for necessary office and clerical expense in connection with the enforcement of RCW 76.04.370.

When land against which forest patrol assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment, and the county treasurer in case the proceeds of sale exceed the amount of the delinquent tax judgment shall forthwith remit to the supervisor of the department of natural resources the amount of the outstanding patrol assessments.

All public bodies owning or administering forest lands shall pay the forest patrol assessments provided in this section and the special forest fire suppression account assessments under RCW 76.04.515. The forest patrol assessments and special forest fire suppression account assessments shall be payable by public bodies from any available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided. Unpaid assessments shall not be a lien against the publicly owned land but shall constitute a debt by the public body to the department and shall be subject to interest charges in the same amount as other unpaid forest patrol assessments.

A public body, having failed to previously pay forest patrol assessments required of it by this section, which fails to suppress a fire on or originating from forest lands owned or administered by it shall be liable for the costs of suppression incurred by the department or its agent and shall not be entitled to reimbursement of any costs incurred by the public body in the suppression activities.

The supervisor of the department of natural resources shall furnish the surety company bond under RCW 43.30.170(6), conditioned for the faithful performance of his duties and for a faithful accounting for all sums received and expended thereunder, which bond shall be approved by the attorney general. [1977 ex.s. c 102 § 1. Prior: 1973 1st ex.s. c 195 § 87; 1973 1st ex.s. c 182 § 1; 1971 ex.s. c 207 § 14; 1959 c 123 § 1; 1955 c 142 § 14; 1951 c 58 § 8; 1925 ex.s. c 43 § 6; 1923 c 184 § 10; 1921 c 64 § 1; 1917 c 105 § 2; RRS § 5805.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

76.04.370 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs. Any land in the state covered wholly or in part by forest debris and which by reason of such condition is likely to further the spread of fire and thereby endanger life or property, shall constitute an additional fire hazard, and the owner thereof and/or the person responsible for its existence shall take reasonable measures to reduce the danger of fire spreading from the area and may abate such hazard by burning or other satisfactory means.

Notwithstanding the above, the department shall promulgate rules and regulations defining areas of extreme

fire hazard including but not limited to high risk areas such as where life or buildings may be endangered, areas adjacent to public highways, and areas of frequent public use and the owner and/or person responsible shall abate such hazard; and in addition the department may define other conditions of extreme fire hazard with a high potential for fire spreading to lands in other ownerships and may, under rules and regulations adopted after consultation with the advisory board, prescribe additional measures that shall be taken by the owner and/or person responsible to isolate and/or reduce such hazard.

If the owner or person responsible for the existence of such extreme hazard or for the existence of forest debris subject to RCW 76.04.310 as now or hereafter amended, refuses, neglects, or fails to abate, isolate or reduce the same, the department may summarily cause it to be abated, isolated, or reduced as required in *this act and twice the actual cost thereof may be recovered from the owner or person responsible therefor. Such costs shall include all salaries and expenses of men and equipment incurred therein, including those of the department. All such costs shall also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien. The summary action may be taken only after ten days' notice in writing, which shall include a suggested method of abatement and estimated cost thereof, has been given to the owner or reputed owner of the land on which such hazard or forest debris subject to RCW 76.04.310 as now or hereafter amended exists, either by personal service or by registered or certified letter addressed to him at his last known place of residence. [1971 ex.s. c 207 § 3; 1951 c 235 § 1; 1939 c 58 § 1; 1929 c 134 § 1; 1921 c 64 § 2; 1917 c 105 § 4; RRS § 5807.]

*Reviser's note: "this act" [1971 ex.s. c 207] consists of RCW 76.04.385, 76.04.515, 76.04.520, to the 1971 amendments to RCW 76.04.010, 76.04.180, 76.04.310, 76.04.360, 76.04.370, 76.04.380, 76.04.390, 76.04.510, 76.08.010, 76.08.050, 76.08.060, and to the repeal of RCW 76.04.040 and 76.04.230.

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Mechanics' liens, generally: Chapter 60.04 RCW.

76.04.380 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs. Any fire on or threatening any forest land burning uncontrolled and without proper action being taken to prevent its spread, notwithstanding the origin of such fire, is a public nuisance by reason of its menace to life and property. Any person engaged in any activity on such lands, having knowledge of such fire, notwithstanding the origin or subsequent spread thereof on his own or other forest lands, and/or the landowner, shall make every reasonable effort to suppress such fire and to prudently report the same to the department. If such person has not suppressed such fire, the department shall summarily suppress the fire and the cost thereof may be recovered from the owner, lessee, or other possessor of the land and the cost of the work shall also constitute a lien upon the property or chattels under his ownership. Such lien may be filed by the department in the office of the county auditor and foreclosed in the same manner provided by law for the foreclosure of mechanics' liens. The

prosecuting attorney shall bring the action to recover the cost or foreclose the lien, upon the request of the department: *Provided*, That in the absence of negligence, no costs, other than those provided in RCW 76.04.385 shall be recovered from any landowner for lands subject to the forest patrol assessment with respect to the land on which the fire burns.

When a fire occurs in a land clearing, right of way clearing, or landowner operation it shall be fought to the full limit of the available employees and equipment, and such fire fighting shall be continued with the necessary crews and equipment in such numbers as are, in the opinion of the department sufficient to suppress the fire. The fire shall not be left without a fire fighting crew or fire patrol until authority so to do has been granted in writing by the department. [1971 ex.s. c 207 § 4; 1951 c 58 § 9; 1945 c 99 § 1; 1937 c 152 § 2; 1917 c 105 § 3; Rem. Supp. 1945 § 5806.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Mechanics' liens, generally: Chapter 60.04 RCW.

76.04.385 Reimbursement for costs of suppression action. Any person, firm, or corporation, public or private, obligated to take suppression action on any forest fire shall, under the provisions of this section, be entitled to reimbursement for reasonable costs incurred thereby, subject to the following:

(1) If the fire is started in the course of or as a result of a land clearing, right of way clearing, or landowner's operation, the person, firm, or corporation conducting such operation shall supply at his expense the manpower and equipment under his control and reasonably available until midnight on the day on which the fire started, after which time he shall supply, at his expense, only the manpower and equipment which were within a one-half mile radius of the point of origin of such fire, but in any case never less than five men and one suitable bulldozer, or other equipment accepted by the department as equivalent, unless, in the opinion of the department, less is needed for the purpose of suppressing the same. If he has no men or equipment within the said one-half mile he shall pay to the department the equivalent of the minimum requirement. If after midnight of the day on which the fire started, additional manpower and equipment are necessary, in the opinion of the department, he shall supply the manpower and equipment under his control outside such one-half mile radius, if reasonably available, but he shall be reimbursed for such manpower and equipment as provided herein;

(2) Where a fire, which occurred in the course of or as a result of a land clearing, right of way clearing, or landowners operation, and which fire had previously been suppressed, rekindles, the operator shall be required to supply at his expense the same manpower and equipment which were required of him at the time of the original fire.

(3) Claims for reimbursement shall be submitted within a reasonable time to the department which shall, upon verifying the amounts therein and the necessity therefor, authorize payment at such rates as established by the department for wages and equipment rental;

(4) No reimbursement provided herein shall be allowed to a person, firm, or corporation negligently responsible for the starting or existence of any fire for which costs may be recoverable by the department pursuant to law.

Reimbursement of emergency fire costs incurred or approved by the department in suppressing a forest fire may be paid from the appropriate contingency account as provided therein. Such payment shall be without restriction to the right of the department to recover costs pursuant to the provisions of RCW 76.04.390 as now or hereafter amended or other laws but any such recovery by the department shall be returned into the account from which it was spent, less reasonable costs of collection. [1973 1st ex.s. c 24 § 3; 1971 ex.s. c 207 § 5.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

76.04.390 Negligent starting of fires—Permitting existence of extreme fire hazard or forest debris—Liability for costs—Recovery. Any person, firm, or corporation negligently responsible for the starting or existence of a fire which spreads on forest land, including permitting the existence of an extreme fire hazard under RCW 76.04.370, as now or hereafter amended, after failure to abate, isolate, or reduce, as required in *this 1971 amendatory act, or for the existence of forest debris subject to RCW 76.04.310 as now or hereafter amended, and which contributes to the spread of said fire, shall be liable for any expense made necessary by such negligence, incurred by the state, a municipality, or a forest protective association, in fighting such fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs, provided that any such expense was authorized or subsequently approved by the department of natural resources. The department or agency incurring such expense shall have a lien for the same against any property of said person, firm, or corporation liable as above provided by filing a claim of lien naming said person, firm, or corporation describing the property against which the lien is claimed, specifying the amount expended on the lands on which the fire fighting took place and the period during which the expenses were incurred, and signed by the claimant with post office address. No claim of lien shall be valid unless filed with the county auditor of the county in which the property sought to be charged is located within a period of ninety days after the expenses of the claimant were incurred. The claimant may recover said expenses incurred in a civil action against said person, firm, or corporation liable therefor, and shall have in addition the lien remedy above provided. Said lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington. [1977 ex.s. c 102 § 4; 1971 ex.s. c 207 § 6; 1923 c 184 § 11, part; RRS § 5806-1.]

*Reviser's note: "this 1971 amendatory act", see note following RCW 76.04.370.

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Mechanics' liens, generally: Chapter 60.04 RCW.

76.04.395 Permitting spread of fire—Penalty. Any person who shall negligently suffer fire originating on his own property to spread to the property of another shall be deemed guilty of a misdemeanor. [1923 c 184 § 11, part; RRS § 5806-2. Formerly RCW 9.40.090.]

76.04.397 Cutting or destroying trees without authority—Penalty. Any person who shall go upon any lands owned by the state, or by any person, firm or corporation, without the consent of the owner thereof, and cut down, cut off, top, or destroy any tree, shall be punished by a fine equivalent to one dollar for every tree so cut down, topped, or destroyed. [1923 c 184 § 11, part; RRS § 5813-1. Formerly RCW 9.61.130.]

76.04.400 Cooperative protection. When any responsible protective agency or agencies composed of timber owners other than the state shall agree to undertake systematic forest protection in cooperation therewith and such cooperation shall appear more advantageous to the state than the maintenance of the independent system provided elsewhere by law, the *state forester may, with the approval of the *state board of forest commissioners, designate suitable areas to be official cooperative districts and substitute thereto whenever necessary, in place of the county wardens elsewhere provided by law, such district wardens, with such district headquarters and duties, as may be agreed upon by him and by the cooperating agencies to render such cooperation most effective. He may also cooperate in the compensation of such wardens, or in the payment of other expenses for the prevention and control of fire in such official fire districts, to such extent as the board of forest commissioners may deem equitable on behalf of the state, and claim for such payments shall be approved and paid in the manner prescribed for claims outside such cooperative districts. [1917 c 105 § 5; RRS § 5808.]

*Reviser's note: "state forester", "state board of forest commissioners", see note following RCW 76.04.020.

76.04.410 Contracts for protection and development. The state supervisor of forestry shall, subject to the approval of the director of the department of conservation and development, have power, subject to the provisions hereof, to enter into contracts and undertakings with private corporations or rural fire protection districts for the protection and development of the forests or any designated forest area within the state. [1949 c 141 § 1; 1933 c 45 § 1; Rem. Supp. 1949 § 5817-1.]

Construction—1933 c 45: "This act shall be construed so as not to abrogate or supplant any of the provisions of chapter 43, Laws of the Extraordinary Session 1925 [RCW 76.04.080, 76.04.140, 76.04.150, 76.04.210, 76.04.300 and 76.04.360], or chapter 40, Laws of 1931 [chapter 84.28 RCW]." [1933 c 45 § 5.] This applies to RCW 76.04.410 through 76.04.440.

76.04.420 Corporations may contract with state. Any private corporation organized and existing under the laws of this state, or organized under the laws of any other state and legally qualified to transact business in this state, may, where its articles of incorporation or charter so provide, contract with the state supervisor of

forestry for the purposes provided for in RCW 76.04.410. [1933 c 45 § 2; RRS § 5817-2.]

76.04.430 Articles of incorporation—Requirements. Before any such private corporation shall be qualified to enter into any such contract, there shall be incorporated into the articles of incorporation or charter of such corporation a provision limiting the dividends which are by law payable to the stockholders thereof and such corporation shall, out of its earnings or earned surplus, and in a manner satisfactory to the state supervisor of forestry, provide for the annual setting apart of a fund or funds to discharge any contract entered into between such corporation and the said state supervisor of forestry relating to said matters. [1933 c 45 § 3; RRS § 5817-3.]

76.04.440 Requisites of contracts. Any undertaking for the protection and development of the forests of the state under RCW 76.04.410 through 76.04.440 shall be regulated and controlled by a contract to be entered into between said qualified private corporation and the state supervisor of forestry, such contract to outline the lands involved and the conditions and details of said undertaking, including an exact specification of the amount of funds to be made available by said corporation and the time and manner of the disbursement thereof: *Provided, however,* That before entering into any such contract, the state supervisor of forestry shall be satisfied that said private corporation is financially solvent and will be able to carry out the project outlined in said contract: *And provided further,* That the state supervisor of forestry shall have charge of the project for the protection and development of the forest area described in such contract, and that any expense incurred by said state supervisor of forestry under any such contract shall be payable solely by said corporation from the fund or funds provided by it for said purposes, and that the state of Washington shall not in any event be responsible to any person, firm, company or corporation for any such indebtedness thereby created. [1933 c 45 § 4; RRS § 5817-4.]

76.04.480 Olympic peninsula area protection—Penalty for violation of rules. (Effective until July 1, 1980.) Any person violating or failing to comply with any rules or regulations of the director of conservation and development through and by means of the division of forestry, made under the provisions of *this act, shall be guilty of a misdemeanor. [1923 c 143 § 3; 1921 c 67 § 4; RRS § 5821.]

*Reviser's note: "[T]his act" refers to 1921 c 67 codified herein as RCW 76.04.450 through 76.04.485 as amended.

76.04.480 Olympic peninsula area protection—Penalty for violation of rules. (Effective July 1, 1980.) Any person violating or failing to comply with any rules or regulations of the department of natural resources made under the provisions of *RCW 76.04.460, shall be guilty of a misdemeanor: *Provided,* That violation of a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [1979 1st ex.s. c 136 § 105; 1923 c 143 § 3; 1921 c 67 § 4; RRS § 5821.]

*Reviser's note: RCW 76.04.460 was repealed by 1979 1st ex.s. c 8 § 3.

Effective date—Severability—1979 1st ex.s. c 136: See notes following RCW 46.63.010.

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76.04.480 Olympic peninsula area protection—Penalty for violation of rules. [1923 c 143 § 3; 1921 c 67 § 4; RRS § 5821.] Repealed by 1979 1st ex.s. c 8 § 3.

*Reviser's note: RCW 76.04.480 was amended by 1979 1st ex.s. c 136 and repealed by 1979 1st ex.s. c 8, each without reference to the other. For rule of construction, see RCW 1.12.025.

76.04.490 Clarke–McNary fund. The division of forestry of the department of conservation and development and the Washington State University, and each of them, are hereby authorized to receive funds from the federal government in connection with cooperative work with the United States department of agriculture, authorized by sections 4 and 5 of the Clarke–McNary act of congress, approved June 7, 1924, providing for the procurement, protection and distribution of forestry seed and plants for the purpose of establishing windbreaks, shelter belts and farm wood lots and to assist the owners of farms in establishing, improving and renewing wood lots, shelter belts and windbreaks; and are authorized to disburse such funds as needed. [1939 c 68 § 1; RRS § 5823-1.]

76.04.500 Cooperative farm forestry funds. The division of forestry of the department of conservation and development and the Washington State University, upon the approval of the director of the department of conservation and development, are hereby authorized to receive funds from the federal government for cooperative work, as authorized by the *cooperative farm forestry act of congress, approved May 18, 1937, for all purposes authorized by said act, and to disburse said funds in cooperation with the federal government in accordance therewith. [1939 c 68 § 2; RRS § 5823-2.]

*Reviser's note: The "cooperative farm forestry act" was repealed August 25, 1950 (repeal effective June 30, 1951) by the "cooperative forest management act", chapter 781, public law 729, 64 Stat. 473 (Title 16 U.S.C.A. §§ 568c, 568d).

76.04.510 State funds—Loans—Recovery of funds from the landowner contingency fire suppression account. Biennial general fund appropriations to the department of natural resources normally provide funds for the purpose of paying the emergency fire costs and expenses incurred and/or approved by the department in forest fire suppression or in reacting to any potential forest fire situation. When a determination is made that the fire started in the course of or as a result of a participating landowner operation, moneys expended from such appropriations in the suppression of such fire shall be recovered from the landowner contingency forest fire suppression account. The department shall transmit to the state treasurer for deposit in the general fund any such moneys which are later recovered. Moneys recovered during the biennium in which they are expended may be spent for purposes set forth in this section during the same biennium, without reappropriation. Loans between the general fund and the landowner contingency forest fire suppression account are authorized for emergency fire suppression. Such loans shall not exceed the amount appropriated for emergency forest fire suppression costs and shall bear interest at the then current rate

of interest as determined by the state treasurer. [1979 1st ex.s. c 67 § 10; 1971 ex.s. c 207 § 7; 1959 c 332 § 1.]

Severability—1979 1st ex.s. c 67: See note following RCW 19.28.330.

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

76.04.515 Landowner contingency forest fire suppression account. There is created a landowner contingency forest fire suppression account which shall be a separate account in the general fund. This account shall be for the purpose of paying emergency fire costs incurred or approved by the department in the suppression of forest fires. When a determination is made that the fire was started by other than a participating landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from such general fund appropriations as may be available for emergency fire suppression costs. Moneys spent from this account shall be by appropriation. The department shall transmit to the state treasurer for deposit in the landowner contingency forest fire suppression account any moneys paid out of said account which are later recovered, less reasonable costs of recovery, which moneys may be expended for purposes set forth herein during the current biennium, without reappropriation.

This account shall be established and renewed by a special forest fire suppression account assessment paid by participating forest landowners at rates to be established by the department, but not to exceed five cents per acre per year for such period of years as may be necessary to establish and thereafter reestablish a balance in said account of one million dollars. The assessments with respect to forest lands in western and eastern Washington may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by participating landowner operations. Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made, and may be collected as directed by the department in the same manner as forest patrol assessments. This account shall be held by the state treasurer who is authorized to invest so much of said account as is not necessary to meet current needs. Any interest earned on moneys from said account shall be deposited in and remain a part of the account, and shall be computed as part of the same in determining the balance thereof. Interfund loans to and from this account are authorized at the then current rate of interest as determined by the state treasurer, provided that the effect of the loan is considered for purposes of determining the assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.390 as now or hereafter amended, or other laws.

When the department determines that a forest fire was started in the course of or as a result of a participating landowner operation, it shall notify the forest fire advisory board of such determination. Such determination shall be final, unless, within ninety days of such notification, the forest fire advisory board or any interested

party, serves a request for a hearing before the department. Such hearing shall constitute a contested case under chapter 34.04 RCW and any appeal therefrom shall be to the superior court of Thurston county. [1979 1st ex.s. c 67 § 11; 1973 1st ex.s. c 24 § 4; 1971 ex.s. c 207 § 8.]

Severability—1979 1st ex.s. c 67: See note following RCW 19.28.330.

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

76.04.520 Forest fire advisory board. There is hereby created a forest fire advisory board, consisting of seven members who shall represent private and public forest landowners and other interested segments of the public. The members shall be appointed by the commissioner of public lands and shall serve at his pleasure, without compensation.

The duties of the forest fire advisory board shall be strictly advisory and shall include, but not necessarily be limited to, reviewing forest fire prevention and suppression policies of the department; monitoring expenditures from and recoveries for the landowner contingency forest fire suppression account; recommending appropriate assessments and allocations for establishment and replenishment of said account based upon the proportionate expenditures necessitated by participating landowner operations in western and eastern Washington; recommending to the department appropriate rules and regulations or amendments to existing rules and regulations and reviewing nonemergency rules and regulations, affecting the protection of forest lands from fire, including reasonable alternative means or procedures for the abatement, isolation, or reduction of forest fire hazards. Except where an emergency exists, all rules and regulations as to the above shall be promulgated by the department after consultation with the forest fire advisory board. [1979 c 49 § 2; 1971 ex.s. c 207 § 9.]

Construction—1971 ex.s. c 207: See note following RCW 76.04.010.

Chapter 76.06

FOREST INSECT AND DISEASE CONTROL

Sections

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Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.06.010 Forest insects and tree diseases are public nuisance. Forest insects and forest tree diseases which threaten the permanent timber production of the forest areas of the state of Washington are hereby declared to be a public nuisance. [1951 c 233 § 1.]

76.06.020 Definitions. As used in this chapter:
 "Supervisor" means the supervisor of forestry;
 "Board" means the state forest board;
 "Owner" means and includes individuals, partnerships, corporations and associations;
 "Agent" means the recognized legal representative, representatives, agent or agents for any owner;
 "Timber land" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the board, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration. [1951 c 233 § 2.]

76.06.030 Administration. This chapter shall be administered by the division of forestry under the guidance and approval of the state forest board. [1951 c 233 § 3.]

76.06.040 Owner must control pests and diseases. Every owner of timber lands, or his agent, shall make every reasonable effort to control, destroy and eradicate such forest insect pests and forest tree diseases which threaten the existence of any stand of timber or provide for the same to be done on timber lands owned by him or under his control. In the event he fails, neglects, or is unable to accomplish such control, the action may be performed as provided for in this chapter. [1951 c 233 § 4.]

76.06.050 Infestation control district—Creation—Notice to owners. Whenever the supervisor finds timber lands threatened by infestations of forest insects or forest tree diseases, and if he finds that such infestation is of such character as to threaten destruction of timber stands, the supervisor shall with the approval of the board declare and certify an infestation control district and fix and declare the boundaries thereof, so as to definitely describe such district. Said district may include timber lands threatened by the infestation as well as those timber lands already infested.

Thereafter the supervisor shall at once serve written notice to all owners of timber lands or their agents within the said district to proceed under the provisions of this chapter without delay to control, destroy and eradicate the said forest insect pests or forest tree diseases as provided herein. The said notice may be made by personal service, or by mail addressed to the last known place or address of such owner or agent. Said notice shall list and describe the method or methods of action that will be acceptable to the board if the owner or agent elects to control, destroy and eradicate said insects or diseases on his own property.

Said notice when published for five consecutive days in at least one daily newspaper or in two consecutive issues of a weekly newspaper, either paper having a general circulation in said district will serve as the written notice to owners of noncommercial timber lands. [1961 c 72 § 1; 1951 c 233 § 5.]

76.06.060 State shall control pests and diseases if owner fails. If the owner or agent so notified shall fail, refuse, neglect or is unable to comply with the requirements of said notice, within a period of thirty days after the date thereof, it shall be the duty of the supervisor or his agents, using such funds as have been, or hereafter may be, made available to proceed with the control, eradication and destruction of such forest pests or forest tree diseases with or without the cooperation of the owner involved in a manner approved by the forest board. [1951 c 233 § 6.]

76.06.070 Lien for costs of control—Collection. Upon the completion of the work directed, authorized and performed under the provisions of this chapter, the supervisor shall prepare a verified statement of the expenses necessarily incurred in performing the work of controlling, eradicating and destroying said forest insects or forest tree diseases. The balance of such expenses after deducting such amounts as may be contributed to the control costs by the state, by the federal government, or by any other agencies, companies, corporations or individuals, shall be a lien to be prorated per acre upon the property, or properties involved: *Provided*, That the amount of said lien shall not exceed twenty-five percent of the total costs incurred on such owner's lands including necessary buffer strips. Said lien shall be reported by the supervisor to the county assessor of the county in which said lands are situated, and shall be levied and collected with the next taxes on such lands in the same manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes in this state: *Provided further*, Such report and levy shall be made only on commercial timber lands. The assessor shall extend the amounts on the assessment roll in a separate column, and the procedure provided by law for the collection of taxes and delinquent taxes shall be applicable thereto, and, upon the collection thereof, the county treasurer shall repay the same to the supervisor to be applied to the expenses incurred in carrying out the provisions of this chapter. [1951 c 233 § 7.]

76.06.080 Owner complying with notice is exempt. Every owner, and all owners or representatives, who upon receiving notice as provided in RCW 76.06.050, shall proceed and continue in good faith to control, eradicate and destroy said forest insects and forest tree diseases in accordance with standards established by the supervisor shall be exempt from the provisions hereof as to the lands upon which he or they are so proceeding. [1951 c 233 § 11.]

76.06.090 Dissolution of infestation control district. Whenever the board shall determine that insect control work within the designated district of infestation is no

longer necessary or feasible, said board by resolution may dissolve said district. [1951 c 233 § 12.]

76.06.100 Forest insect and disease control fund created. (Effective until July 1, 1980.) There is hereby created the forest insect and disease control fund of which the state treasurer shall be the custodian. The state treasurer shall keep an account of his records of said fund and all sums deposited therein and expended or withdrawn therefrom. Any sums placed in said fund shall be kept separate and apart from the funds of the state treasurer, and shall not be deemed to be a part of the state funds, but shall be pledged for the purpose of paying costs incurred for the control, eradication, and destruction of forest insect pests and forest diseases. No funds shall be expended for payment of said costs, until so authorized by the board. [1951 c 233 § 8.]

Reviser's note: This section repealed effective July 1, 1981, by 1979 1st ex.s. c 67 § 19.

State funds: Chapter 43.79 RCW.

76.06.110 Deposits and availability of fund—Balances do not revert to general fund. (Effective until July 1, 1981.) All moneys collected under the provisions of RCW 76.06.070, together with such moneys as may be appropriated by the legislature for the purposes of this chapter, by the federal government or by any owner or agent, shall be deposited by the supervisor in the forest insect and disease control fund, and the moneys therein hereby are made available to the board for the purposes of this chapter.

All unexpended balances remaining in said fund shall continue to be available for the purposes of this chapter and shall not revert to the state general fund. [1951 c 233 § 9.]

76.06.110 Deposit of moneys in general fund—Allotment as unanticipated receipts. (Effective July 1, 1981.) All moneys collected under the provisions of RCW 76.06.070, together with such moneys as may be contributed by the federal government or by any owner or agent, shall be deposited in the state general fund for the purposes of this chapter.

Any additional revenue earmarked for the purposes of this chapter which was not anticipated in the budget adopted by the legislature may be deposited in the general fund and allotted as unanticipated receipts pursuant to RCW 43.79.270 through 43.79.282 as now existing or hereafter amended. [1979 1st ex.s. c 67 § 12; 1951 c 233 § 9.]

Effective date—1979 1st ex.s. c 67: "Sections 12, 13, and 19 of this 1979 act shall take effect on July 1, 1981." [1979 1st ex.s. c 67 § 21.] This annotation applies to the amendments to RCW 76.06.110 and 76.40.030 and to the repeal of RCW 76.06.100, 76.06.120, 76.40.015, 76.40.016, 76.42.040, and 76.42.050 by 1979 1st ex.s. c 67.

Severability—1979 1st ex.s. c 67: See note following RCW 19.28.330.

76.06.120 Appropriations made available. (Effective until July 1, 1981.) Any money appropriated to the forest insect and disease control fund is hereby made available to the division of forestry for the purposes of this chapter. [1951 c 233 § 10.]

Reviser's note: This section repealed effective July 1, 1981, by 1979 1st ex.s. c 67 § 19.

Chapter 76.09 FOREST PRACTICES

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76.09.010 Legislative finding and declaration. (1) The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

(2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive state-wide system of laws and forest practices regulations which will achieve the following purposes and policies:

(a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest;

(b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;

(c) Recognize both the public and private interest in the profitable growing and harvesting of timber;

(d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;

(e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such regulation;

(f) Provide for interagency input and intergovernmental coordination and cooperation;

(g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices; and

(h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations. [1974 ex.s. c 137 § 1.]

76.09.020 Definitions. For purposes of this chapter:

(1) "Appeals board" shall mean the forest practices appeals board created by RCW 76.09.210.

(2) "Commissioner" shall mean the commissioner of public lands.

(3) "Contiguous" shall mean land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right of way shall be considered contiguous.

(4) "Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices regulations.

(5) "Department" shall mean the department of natural resources.

(6) "Forest land" shall mean all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

(7) "Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: *Provided*, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(8) "Forest practice" shall mean any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(9) "Forest practices regulations" shall mean any rules promulgated pursuant to RCW 76.09.040.

(10) "Application" shall mean the application required pursuant to RCW 76.09.050.

(11) "Operator" shall mean any person engaging in forest practices except an employee with wages as his sole compensation.

(12) "Person" shall mean any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(13) "Public resources" shall mean water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(14) "Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

(15) "Timber owner" shall mean any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(16) "Board" shall mean the forest practices board created in RCW 76.09.030. [1974 ex.s. c 137 § 2.]

76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—

Compensation, travel expenses—Staff. (1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

- (a) The commissioner of public lands or his designee;
- (b) The director of the department of commerce and economic development or his designee;
- (c) The director of the department of agriculture or his designee;
- (d) The director of the department of ecology or his designee;
- (e) An elected member of a county legislative authority appointed by the governor: *Provided*, That such member's service on the board shall be conditioned on his continued service as an elected county official; and
- (f) Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.

(2) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his successor is appointed and qualified. The commissioner of public lands or his designee shall be the chairman of the board.

(3) The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(4) Members of the board, except public employees and elected officials, shall receive forty dollars for each day or major portion thereof actually spent in attending to their duties as board members and in addition they shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(5) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties. [1975-'76 2nd ex.s. c 34 § 173; 1975 1st ex.s. c 200 § 1; 1974 ex.s. c 137 § 3.]

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

76.09.040 Forest practices regulations—Promulgation—Review of proposed regulations—Hearings—Adoption. (1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall promulgate forest practices regulations establishing minimum standards for forest practices and setting forth necessary administrative provisions, pursuant to chapter 34.04 RCW and in accordance with the procedures enumerated in this section and RCW 76.09.200. Forest

practices regulations pertaining to water quality protection shall be promulgated individually by the board and by the department of ecology after they have reached agreement with respect thereto. All other forest practices regulations shall be promulgated by the board.

Forest practices regulations shall be administered and enforced by the department except as otherwise provided in this chapter. Such regulations shall be promulgated and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2) The board shall prepare proposed forest practices regulations. In addition to any forest practices regulations relating to water quality protection proposed by the board, the department of ecology shall prepare proposed forest practices regulations relating to water quality protection.

Prior to initiating the rule making process, the proposed regulations shall be submitted for review and comments to the department of fisheries, the department of game, and to the counties of the state. After receipt of the proposed forest practices regulations, the departments of fisheries and game and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed regulations relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed regulations pursuant to chapter 34.04 RCW. At such hearing(s) any county may propose specific forest practices regulations relating to problems existing within such county. The board and the department of ecology may adopt such proposals if they find the proposals are consistent with the purposes and policies of this chapter. [1974 ex.s. c 137 § 4.]

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver. (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource that may be conducted without submitting an application or a notification;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, or being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 75.20.100;

(c) Within "shorelines of the state" as defined in RCW 90.58.030; or

(d) Excluded from Class II by the board;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within fourteen calendar days from the date the department receives the application;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, (b) on lands being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, and/or (d) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: *Provided*, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) No Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended: *Provided*, That any person commencing a forest practice during 1974 may continue such forest practice until April 1, 1975, if such person has submitted an application to the department prior to January 1, 1975: *Provided, further*, That in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) If a notification or application is delivered in person to the department by the operator or his agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) The department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: *Provided*, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: *Provided, further*, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: *Provided, further*, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology, game, and fisheries, and to the county in which the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) If the county believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) The department shall not approve portions of applications to which a county objects if:

(a) The department receives written notice from the county of such objections within fourteen business days from the time of transmittal of the application to the county, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

- (i) Platted after January 1, 1960; or
- (ii) Being converted to another use.

The department shall either disapprove those portions of such application or appeal the county objections to the appeals board. If the objections related to subparagraphs (b) (i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county objections. Unless the county either consents or has waived its rights under this subsection, the department shall not approve portions of an application

affecting such lands until the minimum time for county objections has expired.

(8) In addition to any rights under the above paragraph, the county may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) Appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(9). In such appeals there shall be no presumption of correctness of either the county or the department position.

(10) The department shall, within four business days notify the county of all notifications, approvals, and disapprovals of an application affecting lands within the county, except to the extent the county has waived its right to such notice.

(11) A county may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department. [1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

**76.09.060 Applications for forest practices—
Form—Contents—Conversion of forest land to other
use—New applications—Approval—Emergencies.**

(1) The department shall prescribe the form and contents of the notification and application. The forest practices regulations shall specify by whom and under what conditions the notification and application shall be signed. The application or notification shall be delivered in person or sent by certified mail to the department. The information required may include, but shall not be limited to:

(a) Name and address of the forest land owner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices regulations;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources; and

(j) An affirmation that the statements contained in the notification or application are true.

(2) At the option of the applicant, the application or notification may be submitted to cover a single forest practice or any number of forest practices within reasonable geographic or political boundaries as specified by the department. Long range plans may be submitted to the department for review and consultation.

(3) The application shall indicate whether any land covered by the application will be converted or is intended to be converted to a use other than commercial timber production within three years after completion of the forest practices described in it. (a) If the application states that any such land will be or is intended to be so converted:

(i) The reforestation requirements of this chapter and of the forest practices regulations shall not apply if the land is in fact so converted unless applicable alternatives or limitations are provided in forest practices regulations issued under RCW 76.09.070 as now or hereafter amended;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.28, 84.33, and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city and regional governmental authority permitted under RCW 76.09.240 as now or hereafter amended as well as the forest practices regulations.

(b) If the application does not state that any land covered by the application will be or is intended to be so converted:

(i) For six years after the date of the application the county or city and regional governmental entities may deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;

(ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal from classification under the provisions of RCW 84.28.065, a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes; and

(iii) Conversion to a use other than commercial timber operations within three years after completion of the forest practices without the consent of the county or municipality shall constitute a violation of each of the county, municipal and regional authorities to which the forest practice operations would have been subject if the application had so stated.

(c) The application shall be either signed by the land owner or accompanied by a statement signed by the land owner indicating his intent with respect to conversion and acknowledging that he is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) The notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of one year from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice. [1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

76.09.070 Reforestation—Requirements—

Procedures. After the completion of a logging operation, satisfactory reforestation as defined by the rules and regulations promulgated by the board shall be completed within three years: *Provided*, That a longer period may be authorized if seed or seedlings are not available: *Provided further*, That a period of up to five years may be allowed where a natural regeneration plan is approved by the department. Upon the completion of a reforestation operation a report on such operation shall be filed with the department of natural resources. Within twelve months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is compatible with timber growing. The forest practices regulations may identify classifications and/or areas of forest land that have the likelihood of future conversion to urban development within a ten year period. The reforestation requirements may be modified or eliminated on such lands: *Provided*, That such identification and/or such conversion to urban development must be consistent with any local or regional land use plans or ordinances. [1975 1st ex.s. c 200 § 4; 1974 ex.s. c 137 § 7.]

76.09.080 Stop work orders—Grounds—Contents—Procedure—Appeals. (1) The department

shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of this chapter or the forest practices regulations; or

(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) The stop work order shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or wilful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and

(d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be a contested case within the meaning of chapter 34.04 RCW. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding. [1975 1st ex.s. c 200 § 5; 1974 ex.s. c 137 § 8.]

76.09.090 Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order—Limitations on actions.

If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator or land owner a notice, which shall clearly set forth:

(1) (a) The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;

(2) The right of the operator or land owner to a hearing before the department; and

(3) The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or wilful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.

The department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the department: *Provided*, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest land owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of such final order, the operator, forest land owner, or timber owner appeals such final order to the appeals board.

No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: *Provided*, That this provision shall not relieve the forest land owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs. [1975 1st ex.s. c 200 § 6; 1974 ex.s. c 137 § 9.]

76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition. If the department of ecology determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the department of ecology may petition to the chairman of the appeals board, who shall, within forty-eight hours, either deny the petition or direct the department of natural resources to immediately

issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources. [1975 1st ex.s. c 200 § 7; 1974 ex.s. c 137 § 10.]

76.09.110 Final orders or final decisions binding upon all parties. Unless declared invalid on appeal, a final order of the department or a final decision of the appeals board shall be binding upon all parties. [1974 ex.s. c 137 § 11.]

76.09.120 Failure of owner to take required course of action—Notice of cost—Department authorized to complete course of action—Liability of owner for costs—Lien. If an operator fails to undertake and complete any course of action with respect to a forest practice, as required by a final order of the department or a final decision of the appeals board or any court pursuant to RCW 76.09.080 and 76.09.090, the department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forest land owner fails within thirty days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the department. If not paid within sixty days after the department completes such course of action and notifies such forest land owner in writing of the amount due, such amount shall become a lien on such forest land and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens. [1974 ex.s. c 137 § 12.]

76.09.130 Failure to obey stop work order—Departmental action authorized—Liability of owner or operator for costs. When the operator has failed to obey a stop work order issued under the provisions of RCW 76.09.080 the department may take immediate action to prevent continuation of or avoid material damage to public resources. If a final order or decision fixes liability with the operator, timber owner, or forest land owner, they shall be jointly and severally liable for such emergency costs which may be collected in the manner provided for in RCW 76.09.120. [1974 ex.s. c 137 § 13.]

76.09.140 Enforcement. (1) The department of natural resources, through the attorney general, may take any necessary action to enforce any final order or final decision, or to enjoin any forest practices by any person for a one year period after such person has failed to comply with a final order or a final decision.

(2) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department, the forest land owner, timber owner or operator to enforce the forest practice regulations or any final order of the department, or the appeals board: *Provided*, That no civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources: *And provided further*, That such actions shall not be commenced unless the department fails to take appropriate action after ten days written notice to the department by the county of a violation of the forest practices regulations or final orders of the department or the appeals board. [1975 1st ex.s. c 200 § 8; 1974 ex.s. c 137 § 14.]

76.09.150 Inspection—Right of entry. The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of insuring compliance with this chapter and the forest practice regulations and to insure that no material damage occurs to the natural resources of this state as a result of such practices.

Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices regulations. [1974 ex.s. c 137 § 15.]

76.09.160 Right of entry by department of ecology. Any duly authorized representative of the department of ecology shall have the right to enter upon forest land at any reasonable time to administer the provisions of this chapter and RCW 90.48.420. [1974 ex.s. c 137 § 16.]

76.09.170 Violations—Penalties—Remission or mitigation—Appeals. Every person who fails to comply with any provision of RCW 76.09.010 through 76.09.280 as now or hereafter amended or of the forest practices regulations shall be subject to a penalty in an amount of not more than five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a failure to comply with a notice pursuant to RCW 76.09.090 as now or hereafter amended or a stop work order, every day's continuance shall be a separate and distinct violation. Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided for: *Provided*, That no penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board or advisory committee created by this chapter for any act or omission in his duties in the administration of this chapter or of any regulation promulgated thereunder.

The penalty herein provided for shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department of natural resources describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, that department may remit or mitigate the penalty upon whatever terms that department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department of natural resources shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such regulations as it may deem proper.

Any person incurring any penalty hereunder may appeal the same to the forest practices appeals board.

Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application.

Any penalty imposed hereunder shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final decision confirming the penalty in whole or in part.

If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. [1975 1st ex.s. c 200 § 9; 1974 ex.s. c 137 § 17.]

76.09.180 Disposition of moneys received as penalties, reimbursement for damages. All penalties received or recovered by state agency action for violations as prescribed in RCW 76.09.170 shall be deposited in the state general fund. All such penalties recovered as a result of local government action shall be deposited in the local government general fund. Any funds recovered as reimbursement for damages pursuant to RCW 76.09.080 and 76.09.090 shall be transferred to that agency with jurisdiction over the public resource damaged, including but not limited to political subdivisions, the department of

game, the department of fisheries, the department of ecology, the department of natural resources, or any other department that may be so designated: *Provided*, That nothing herein shall be construed to affect the provisions of RCW 90.48.142. [1974 ex.s. c 137 § 18.]

76.09.190 Additional penalty, gross misdemeanor. In addition to the penalties imposed pursuant to RCW 76.09.170, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of RCW 76.09.010 through 76.09.280 or 90.48.420, or of the regulations implementing RCW 76.09.010 through 76.09.280 or 90.48.420, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. [1974 ex.s. c 137 § 19.]

76.09.200 Forest practices advisory committee—Membership—Chairman—Preparation of proposed forest practices regulations—Procedure. (1) On or before the thirtieth day after February 14, 1974, the governor shall appoint, with the approval of the board, the forest practices advisory committee to consist of the following members: A designated representative of the college of forest resources of the University of Washington, a designated representative of the department of forestry and range management of the college of agriculture of Washington State University, a designated representative of the Washington soil and water conservation districts, a designated representative of the department of fisheries, and a designated representative of the department of game; three representatives of private forest land owners and timber owners who regularly engage in forest operations, who are selected for staggered three year terms to represent eastern and western Washington and large and small owners; and three members of the public at large selected for staggered three year terms who have no direct financial interest other than wages in the forest products industry. The advisory committee shall select a chairman from among its members whose vote shall be counted twice in case of a tie vote.

(2) The advisory committee shall hold hearings and take testimony and, on or before August 1, 1974, shall prepare proposed forest practices regulations and submit them to the board. The forest practices regulations shall be applicable state-wide to the extent practicable but shall establish not less than two or more than five forest regions within the state to which different regulations may be applicable, reflecting variations in such factors as timber and soil types and climatic conditions. To assist in the initial preparation of proposed forest practices regulations for different forest regions, the chairman of the advisory committee shall establish regional committees to assist the advisory committee. Such regional committees shall be composed of nine members, four of

whom are private forest land owners regularly engaged in forest practices.

(4) Nothing contained in this section shall be construed to preclude submission of proposed forest practices regulations by any other persons or to eliminate any procedures set forth in chapter 34.04 RCW for adoption, repeal, or modification of rules. [1974 ex.s. c 137 § 20.]

Reviser's note: Hiatus in subsection numbering results from veto of subsection (3).

76.09.210 Forest practices appeals board—Created—Membership—Terms—Vacancies—Removal. (1) There is hereby created within the environmental hearings office under RCW 43.21B.005 the forest practices appeals board of the state of Washington.

(2) The forest practices appeals board shall consist of three members qualified by experience and training in pertinent matters pertaining to the environment, and at least one member of the appeals board shall have been admitted to the practice of law in this state and shall be engaged in the legal profession at the time of his appointment. The appeals board shall be appointed by the governor with the advice and consent of the senate, and no more than two of the members at the time of appointment or during their term shall be members of the same political party.

(3) Members shall be appointed for a term of six years and shall serve until their successors are appointed and have qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy occurs. The terms of the first three members of the appeals board shall be staggered so that their terms shall expire after two, four, and six years.

(4) Any member may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member by the tribunal shall disqualify such member for reappointment.

(5) Each member of the appeals board:

(a) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member, nor shall he serve on or under any committee of any political party; and

(b) Shall not for a period of one year after the termination of his membership, act in a representative capacity before the appeals board on any matter. [1979 1st ex.s. c 47 § 4; 1974 ex.s. c 137 § 21.]

Reviser's note—Sunset Act application: The forest practices appeals board is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.153.

RCW 76.09.210, 76.09.220, and 76.09.230 are scheduled for future repeal under RCW 43.131.154.

Intent—1979 1st ex.s. c 47: See note following RCW 43.21B.005.

76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chairman—Office—Quorum—Powers and duties—Jurisdiction—Review. (1) The appeals board shall operate on either a part time or a full time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part time basis, each member shall receive compensation on the basis of seventy-five dollars for each day spent in performance of his duties: *Provided*, That such compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his duties in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman, and shall at least biennially thereafter meet and elect or reelect a chairman.

(3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

(6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department.

(8) (a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice may seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his request with the department and the attorney general. The attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in subparagraph (a) of this subsection are subject to the provisions of chapter 34.04 RCW pertaining to procedures in contested cases. [1979 1st ex.s. c 47 § 5; 1975-'76 2nd ex.s. c 34 § 174; 1975 1st ex.s. c 200 § 10; 1974 ex.s. c 137 § 22.]

Sunset Act application: See note following RCW 76.09.210.

Intent—1979 1st ex.s. c 47: See note following RCW 43.21B.005.

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

76.09.230 Forest practices appeals board—Appeal procedure—Judicial review. (1) In all appeals over which the appeals board has jurisdiction, a party taking an appeal may elect either a formal or an informal hearing, unless such party has had an informal hearing with the department. Such election shall be made according to the rules of practice and procedure to be promulgated by the appeals board. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(2) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions but such powers shall be exercised in conformity with chapter 34.04 RCW.

(3) In all appeals involving formal hearing the appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.04 RCW relating to contested cases.

(4) All proceedings, including both formal and informal hearings, before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The appeals board shall publish such rules and arrange for the reasonable distribution thereof.

(5) Judicial review of a decision of the appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW 34.04.130 and 34.04.140. [1974 ex.s. c 137 § 23.]

Sunset Act application: See note following RCW 76.09.210.

76.09.240 Restrictions upon local political subdivisions or regional entities—Exceptions and limitations. No county, city, municipality, or other local or regional

governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(1) Land use planning or zoning authority: *Provided*, That exercise of such authority may regulate forest practices only: (a) Where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands will be converted to a use other than commercial timber production; or (b) on lands which have been platted after January 1, 1960: *Provided*, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(2) Taxing powers;

(3) Regulatory authority with respect to public health; and

(4) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971", except that in relation to "shorelines" as defined in RCW 90.58.030, the following shall apply:

(a) The forest practice regulations adopted pursuant to this chapter shall be the sole rules applicable to the performance of forest practices, and enforcement thereof shall be solely as provided in chapter 76.09 RCW;

(b) As to that road construction which constitutes a substantial development, no permit shall be required under chapter 90.58 RCW for the construction of up to five hundred feet of one and only one road or segment of a road provided such road does not enter the shoreline more than once. Such exemption from said permit requirements shall be limited to a single road or road segment for each forest practice and such road construction shall be subject to the requirements of chapter 76.09 RCW and regulations adopted pursuant thereto and to the prohibitions or restrictions of any master program in effect under the provisions of chapter 90.58 RCW. Nothing in this subsection shall add to or diminish the authority of the shoreline management act regarding road construction except as specifically provided herein. The provisions of this subsection shall not relate to any road which crosses over or through a stream, lake, or other water body subject to chapter 90.58 RCW;

(c) Nothing in this section shall create, add to, or diminish the authority of local government to prohibit or restrict forest practices within the shorelines through master programs adopted and approved pursuant to chapter 90.58 RCW except as provided in (a) and (b) above.

Any powers granted by chapter 90.58 RCW pertaining to forest practices, as amended herein, are expressly limited to lands located within "shorelines of the state" as defined in RCW 90.58.030. [1975 1st ex.s. c 200 § 11; 1974 ex.s. c 137 § 24.]

76.09.250 Policy for continuing program of orientation and training. The board shall establish a policy for a continuing program of orientation and training to be conducted by the department with relation to forest

practices and the regulation thereof pursuant to RCW 76.09.010 through 76.09.280. [1974 ex.s. c 137 § 25.]

76.09.260 Department to represent state's interest—Cooperation with other public agencies—Grants and gifts. The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act. [1974 ex.s. c 137 § 26.]

76.09.270 Annual determination of state's research needs—Recommendations. The department, along with other affected agencies and institutions, shall annually determine the state's needs for research in forest practices and the impact of such practices on public resources and shall recommend needed projects to the governor and the legislature. [1974 ex.s. c 137 § 27.]

76.09.280 Removal of log and debris jams from streams. Forest land owners shall permit reasonable access requested by appropriate agencies for removal from stream beds abutting their property of log and debris jams accumulated from upstream ownerships. Any owner of logs in such jams in claiming or removing them shall be required to remove all unmerchantable material from the stream bed in accordance with the forest practices regulations. Any material removed from stream beds must also be removed in compliance with all applicable laws administered by other agencies. [1974 ex.s. c 137 § 28.]

76.09.285 Water quality standards affected by forest practices. See RCW 90.48.420.

76.09.900 Short title. Sections 1 through 28 of this 1974 act shall be known and may be cited as the "Forest Practices Act of 1974". [1974 ex.s. c 137 § 29.]

76.09.905 Air pollution laws not modified. Nothing in RCW 76.09.010 through 76.09.280 or 90.48.420 shall modify chapter 70.94 RCW or any other provision of law relating to the control of air pollution. [1974 ex.s. c 137 § 31.]

76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions. Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter amended shall modify any requirements to comply with the Shoreline Management Act of 1971 except as limited by RCW 76.09.240 as now or hereafter amended, or the hydraulics act (RCW 75.20-.100), other state statutes in effect on January 1, 1975,

and any local ordinances not inconsistent with RCW 76.09.240 as now or hereafter amended. [1975 1st ex.s. c 200 § 12; 1974 ex.s. c 137 § 32.]

76.09.915 Repeal and savings. (1) The following acts or parts of acts are each repealed:

(a) Section 2, chapter 193, Laws of 1945, section 1, chapter 218, Laws of 1947, section 1, chapter 44, Laws of 1953, section 1, chapter 79, Laws of 1957, section 10, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.010;

(b) Section 1, chapter 193, Laws of 1945 and RCW 76.08.020;

(c) Section 3, chapter 193, Laws of 1945, section 2, chapter 218, Laws of 1947, section 1, chapter 115, Laws of 1955 and RCW 76.08.030;

(d) Section 4, chapter 193, Laws of 1945, section 3, chapter 218, Laws of 1947, section 2, chapter 79, Laws of 1957 and RCW 76.08.040;

(e) Section 5, chapter 193, Laws of 1945, section 4, chapter 218, Laws of 1947, section 3, chapter 79, Laws of 1957, section 11, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.050;

(f) Section 6, chapter 193, Laws of 1945, section 5, chapter 218, Laws of 1947, section 2, chapter 44, Laws of 1953, section 12, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.060;

(g) Section 7, chapter 193, Laws of 1945 and RCW 76.08.070;

(h) Section 8, chapter 193, Laws of 1945, section 6, chapter 218, Laws of 1947, section 3, chapter 44, Laws of 1953, section 2, chapter 115, Laws of 1955, section 1, chapter 40, Laws of 1961 and RCW 76.08.080; and

(i) Section 9, chapter 193, Laws of 1945, section 4, chapter 44, Laws of 1953 and RCW 76.08.090.

(2) Notwithstanding the foregoing repealer, obligations under such sections or permits issued thereunder and in effect on the effective date of this section shall continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified. [1974 ex.s. c 137 § 34.]

76.09.920 Application for extension of prior permits. Permits issued by the department under the provisions of RCW 76.08.030 during 1974 shall be effective until April 1, 1975 if an application has been submitted under the provisions of RCW 76.09.050 prior to January 1, 1975. [1974 ex.s. c 137 § 35.]

76.09.925 Effective dates—1974 ex.s. c 137. RCW 76.09.030, 76.09.040, 76.09.050, 76.09.060, 76.09.200, 90.48.420, and 76.09.935 are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. RCW 76.09.010, 76.09.020, 76.09.070, 76.09.080, 76.09.090, 76.09.100, 76.09.110, 76.09.120, 76.09.130, 76.09.140, 76.09.150, 76.09.160, 76.09.170, 76.09.180, 76.09.190, 76.09.210, 76.09.220, 76.09.230, 76.09.240, 76.09.250, 76.09.260, 76.09.270, 76.09.280, 76.09.900,

76.09.905, 76.09.910, 76.09.930, 76.09.915, and 76.09.920 shall take effect January 1, 1975. [1974 ex.s. c 137 § 37.]

76.09.935 Severability—1974 ex.s. c 137. If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances shall not be affected. [1974 ex.s. c 137 § 36.]

Chapter 76.10 SURFACE MINING

Reviser's note: Chapter 64, Laws of 1970 ex.s. has been codified as a new chapter in Title 78 RCW "Mines, Minerals, and Petroleum" although section 1 of the act states "Sections 2 through 25 of this act shall constitute a new chapter in Title 76 RCW." As the act pertains solely to surface mining, the change in placement has been made to preserve the subject matter arrangement of the code.

Chapter 76.12 REFORESTATION

Sections	
76.12.020	Powers of board—Acquisition of land for reforestation—Taxes, cancellation.
76.12.030	Deed of county land to board—Disposition of proceeds.
76.12.035	Reacquisition from federal government of lands originally acquired through tax foreclosure—Agreements.
76.12.040	Gifts of county or city land for offices, warehouses, etc.
76.12.045	Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized.
76.12.050	Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential.
76.12.060	Exchange of lands to consolidate and block up holdings—Agreements and deeds by commissioner.
76.12.065	Exchange of lands to consolidate and block up holdings—Lands acquired are subject to same laws and administered for same fund as lands exchanged.
76.12.070	Reconveyance to county in certain cases.
76.12.072	Transfer of state forest lands back to county for public park use—Procedure—Reconveyance back when use ceases.
76.12.073	Transfer of state forest lands back to county for public park use—Timber resource management.
76.12.074	Transfer of state forest lands back to county for public park use—Lands transferred by deed.
76.12.075	Transfer of state forest lands back to county for public park use—Provisions cumulative and nonexclusive.
76.12.080	Acquisition of forest land—Requisites.
76.12.085	Validation of prior land transfers—Certain lands declared state forest lands.
76.12.090	Utility bonds.
76.12.100	Bonds—Purchase price of land limited—Retirement of bonds.
76.12.110	Forest development account.
76.12.120	Sales and leases of timber, timber land, etc.—Disposition of revenue.
76.12.140	Logging of land—Rules and regulations—Penalty.
76.12.155	Record of forest board proceedings, etc.
76.12.160	Sale or exchange of tree seedling stock and tree seed.
76.12.170	Use of proceeds specified.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

Reservation of state land for reforestation after timber removed: RCW 79.01.164.

76.12.020 Powers of board—Acquisition of land for reforestation—Taxes, cancellation. The *board shall have the power to accept gifts and bequests of money or other property, made in its own name, or made in the name of the state, to promote generally the interests of reforestation or for a specific named purpose in connection with reforestation, and to acquire in the name of the state, by purchase or gift, any lands which by reason of their location, topography or geological formation, are chiefly valuable for purpose of developing and growing timber, and to designate such lands and any lands of the same character belonging to the state as state forest lands; and may acquire by gift or purchase any lands of the same character. Said *board shall have power to seed, plant and develop forests on any lands, purchased, acquired or designated by it as state forest lands, and shall furnish such care and fire protection for such lands as it shall deem advisable. Upon approval of the board of county commissioners of the county in which said land is located such gift or donation of land may be accepted subject to delinquent general taxes thereon, and upon such acceptance of such gift or donation subject to such taxes, the state forest board shall record the deed of conveyance thereof and file with the assessor and treasurer of the county wherein such land is situated, written notice of acquisition of such land, and that all delinquent general taxes thereon, except state taxes, shall be canceled, and the county treasurer shall thereupon proceed to make such cancellation in the records of his office. Thereafter, such lands shall be held in trust, protected, managed, and administered upon, and the proceeds therefrom disposed of, under RCW 76.12.030. [1937 c 172 § 1; 1929 c 117 § 1; 1923 c 154 § 3; RRS § 5812-3. Prior: 1921 c 169 § 1, part.]

***Reviser's note:** "board" refers to the state forest board, see note following Title 76 RCW digest.

76.12.030 Deed of county land to board—Disposition of proceeds. If any land acquired by a county through foreclosure of tax liens, or otherwise, comes within the classification of land described in RCW 76.12.020 and can be used as state forest land and if the board deems such land necessary for the purposes of this chapter, the county shall, upon demand by the board, deed such land to the board and the land shall become a part of the state forest lands, and upon such deed being made the commissioner of public lands shall be notified and enter and note it upon the records of his office.

Such land shall be held in trust and administered and protected by the board as other state forest lands. Any moneys derived from the lease of such land or from the sale of forest products, oils, gases, coal, minerals, or fossils therefrom, shall be distributed as follows:

(1) The expense incurred by the state for administration, reforestation, and protection, not to exceed twenty-

five percent, which rate of percentage shall be determined by the board of natural resources, shall be returned to the forest development account in the state general fund.

(2) Any balance remaining shall be paid to the county in which the land is located to be paid, distributed, and prorated, except as hereinafter provided, to the various funds in the same manner as general taxes are paid and distributed during the year of payment: *Provided*, That any such balance remaining paid to a county of the seventh, eighth, or ninth class shall first be applied to the reduction of any indebtedness existing in the current expense fund of such county during the year of payment. [1971 ex.s. c 224 § 1; 1969 c 110 § 1; 1957 c 167 § 1; 1951 c 91 § 1; 1935 c 126 § 1; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3b); RRS § 5812-36.]

Reviser's note: The forest development fund was originally created by 1923 c 154 § 6. It was recreated by 1951 c 149 (RCW 76.12.110) and was later abolished and superseded by 1955 c 370 (RCW 43.79-.330 through 43.79.334) which created a forest development account in the general fund and transferred thereto all moneys in the forest development fund. RCW 76.12.110 was amended accordingly in 1959.

76.12.035 Reacquisition from federal government of lands originally acquired through tax foreclosure—Agreements. Whenever any forest land which shall have been acquired by any county through the foreclosure of tax liens, or otherwise, and which shall have been acquired by the federal government either from said county or from the state holding said lands in trust, and shall be available for reacquisition, the state board of natural resources and the board of county commissioners of any such county are hereby authorized to enter into an agreement for the reacquisition of such lands as state forest lands in trust for such county. Such agreement shall provide for the price and manner of such reacquisition. The state board of natural resources is authorized to provide in such agreement for the advance of funds available to it for such purpose from the forest development account, all or any part of the price for such reacquisition so agreed upon, which advance shall be repaid at such time and in such manner as in said agreement provided, solely from any distribution to be made to said county under the provisions of RCW 76.12.030; that the title to said lands shall be retained by the state free from any trust until the state shall have been fully reimbursed for all funds advanced in connection with such reacquisition; and that in the event of the failure of the county to repay such advance in the manner provided, the said forest lands shall be retained by the state to be administered and/or disposed of in the same manner as other state forest lands free and clear of any trust interest therein by said county. Such county shall make provisions for the reimbursement of the various funds from any moneys derived from such lands so acquired, or any other county trust forest board lands which are distributable in a like manner, for any sums withheld from funds for other areas which would have been distributed thereto from time to time but for such agreement. [1959 c 87 § 1.]

76.12.040 Gifts of county or city land for offices, warehouses, etc. Any county, city or town is authorized and empowered to convey to the state of Washington any lands owned by such county, city or town upon the selection of such lands by the forestry board of the state of Washington and the state forestry board is hereby authorized to select and accept conveyances of lands from such counties, cities or towns, suitable for use by the said forestry board as locations for offices, warehouses and machinery storage buildings in the administration of the forestry laws and lands of the state of Washington: *Provided, however,* No consideration shall be paid by the state nor by the state forestry board for the conveyance of such lands by such county, city or town. [1937 c 125 § 1; RRS § 5812-3c. FORMER PART OF SECTION: 1937 c 125 § 2 now codified as RCW 76.12.045.]

76.12.045 Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized. The state forestry board, through the division of forestry of the department of conservation and development, is authorized to use such lands for the purposes hereinbefore expressed and to improve said lands and build thereon any necessary structures for the purposes hereinbefore expressed and expend in so doing such funds as may be authorized by law therefor. [1937 c 125 § 2; RRS § 5812-3d. Formerly RCW 76.12.040.]

76.12.050 Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential. The board of county commissioners of any county and/or the mayor and city council or city commission of any city or town and/or the board of natural resources shall have authority to exchange, each with the other, or with the federal forest service, the federal government or any proper agency thereof and/or with any private landowner, county land of any character, land owned by municipalities of any character, and land owned by the state under the jurisdiction of the department of natural resources, for real property of equal value for the purpose of consolidating and blocking up the respective land holdings of any county, municipality, the federal government, or the state of Washington or for the purpose of obtaining lands having commercial recreational leasing potential. [1973 1st ex.s. c 50 § 1; 1961 c 77 § 1; 1937 c 77 § 1; RRS § 5812-3e.]

76.12.060 Exchange of lands to consolidate and block up holdings—Agreements and deeds by commissioner. The commissioner of public lands shall, with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to complete an exchange as authorized by the board of natural resources under RCW 76.12.050. [1961 c 77 § 2; 1937 c 77 § 2; RRS § 5812-3f.]

76.12.065 Exchange of lands to consolidate and block up holdings—Lands acquired are subject to same laws and administered for same fund as lands exchanged. Lands acquired by the state of Washington as the result

of any exchange authorized under RCW 76.12.050 shall be held and administered for the benefit of the same fund and subject to the same laws as were the lands exchanged therefor. [1961 c 77 § 3.]

76.12.070 Reconveyance to county in certain cases. Whenever any county shall have acquired by tax foreclosure, or otherwise, lands within the classification of RCW 76.12.020 and shall have thereafter contracted to sell such lands to bona fide purchasers before the same may have been selected as forest lands by the state forest board, and has heretofore deeded or shall hereafter deed because of inadvertence or oversight such lands to the state or to the state forest board to be held under RCW 76.12.030 or any amendment thereof; the state forest board upon being furnished with a certified copy of such contract of sale on file in such county and a certificate of the county treasurer showing said contract to be in good standing in every particular and that all due payments and taxes have been made thereon, and upon receipt of a certified copy of a resolution of the board of county commissioners of such county requesting the reconveyance to the county of such lands, is hereby authorized to reconvey such lands to such county by quitclaim deed executed by the chairman and secretary of said board: *Provided,* Such reconveyance of lands heretofore acquired by the state or state forest board be made within one year from the taking effect of this act and such reconveyance of lands hereafter so acquired be made within one year from the conveyance thereof to the state or state forest board. [1941 c 84 § 1; Rem. Supp. 1941 § 5812-3g.]

Reviser's note: Effective date of this act [1941 c 84 § 1] was midnight June 11, 1941, see preface 1941 session laws.

76.12.072 Transfer of state forest lands back to county for public park use—Procedure—Reconveyance back when use ceases. Whenever the board of county commissioners of any county shall determine that forest lands, that were acquired from such county by the state pursuant to RCW 76.12.030 and that are under the administration of the department of natural resources, are needed by the county for public park use in accordance with the county and the state outdoor recreation plans, the board of county commissioners may file an application with the board of natural resources for the transfer of such forest lands.

Upon the filing of an application by the board of county commissioners, the department of natural resources shall cause notice of the impending transfer to be given in the manner provided by *RCW 42.32.010. If the department of natural resources determines that the proposed use is in accordance with the state outdoor recreation plan, it shall reconvey said forest lands to the requesting county to have and to hold for so long as the forest lands are developed, maintained, and used for the proposed public park purpose. This reconveyance may contain conditions to allow the department of natural resources to coordinate the management of any adjacent state owned lands with the proposed park activity to encourage maximum multiple use management and may reserve rights of way needed to manage other state

owned lands in the area. The application shall be denied if the department of natural resources finds that the proposed use is not in accord with the state outdoor recreation plan. If the land is not, or ceases to be, used for public park purposes the land shall be conveyed back to the department of natural resources upon request of the department. [1969 ex.s. c 47 § 1.]

*Reviser's note: "RCW 42.32.010" was repealed by 1971 ex. sess. c 250 § 15. Later enactment, see RCW 42.30.060.

76.12.073 Transfer of state forest lands back to county for public park use—Timber resource management. The timber resources on any such state forest land transferred to the counties under RCW 76.12.072 shall be managed by the department of natural resources to the extent that this is consistent with park purposes and meets with the approval of the board of county commissioners. Whenever the department of natural resources does manage the timber resources of such lands, it will do so in accordance with the general statutes relative to the management of all other state forest lands. [1969 ex.s. c 47 § 2.]

76.12.074 Transfer of state forest lands back to county for public park use—Lands transferred by deed. Under provisions mutually agreeable to the board of county commissioners and the board of natural resources, lands approved for transfer to a county for public park purposes under the provisions of RCW 76.12.072 shall be transferred to the county by deed. [1969 ex.s. c 47 § 3.]

76.12.075 Transfer of state forest lands back to county for public park use—Provisions cumulative and nonexclusive. The provisions of RCW 76.12.072 through 76.12.075 shall be cumulative and nonexclusive and shall not repeal any other related statutory procedure established by law. [1969 ex.s. c 47 § 4.]

76.12.080 Acquisition of forest land—Requisites. Said board shall take such steps as it deems advisable for locating and acquiring lands suitable for state forests and reforestation. No sum in excess of two dollars per acre shall ever be paid or allowed either in cash, bonds or otherwise, for any lands suitable for forest growth, but devoid of such; nor shall any sum in excess of six dollars per acre be paid or allowed either in cash, bonds or otherwise, for any lands adequately restocked with young growth or left in a satisfactory natural condition for natural reforestation and continuous forest production; nor shall any lands ever be acquired by said board except upon the approval of the title by the attorney general and on a conveyance being made to the state of Washington by good and sufficient deed. No forest lands shall be designated, purchased, or acquired by said board unless the area so designated or the area to be acquired shall, in the judgment of the board be of sufficient acreage and so located that it can be economically administered for forest development purposes. Whenever the board acquires or designates an area as forest lands it shall designate such area by a distinctive name or number, e.g., "State forest No.", or, "Cascade

State Forest". [1923 c 154 § 4; RRS § 5812-4. Prior: 1921 c 169 § 1, part.]

76.12.085 Validation of prior land transfers—
Certain lands declared state forest lands. All transfers of lands heretofore made to the state forest board as state forest lands are hereby validated, and all lands heretofore administered by the state forest board as state forest lands are hereby declared to be state forest lands and public lands of the state of Washington. [1953 c 209 § 1.]

76.12.090 Utility bonds. For the purpose of acquiring and paying for lands for state forests and reforestation as herein provided the board may issue utility bonds of the state of Washington, in an amount not to exceed two hundred thousand [dollars] in principal, during the biennium expiring March 31, 1925, and such other amounts as may hereafter be authorized by the legislature. Said bonds shall bear interest at not to exceed the rate of two percent per annum which shall be payable annually. Said bonds shall never be sold or exchanged at less than par and accrued interest, if any, and shall mature in not less than a period equal to the time necessary to develop a merchantable forest on the lands exchanged for said bonds or purchased with money derived from the sale thereof. Said bonds shall be known as state forest utility bonds. The principal or interest of said bonds shall not be a general obligation of the state, but shall be payable only from the forest development fund hereinafter created. The board may issue said bonds in exchange for lands selected by it in accordance with *this act, or may sell said bonds in such manner as it deems advisable, and with the proceeds purchase and acquire such lands. Any of said bonds issued in exchange and payment for any particular tract of lands may be made a first and prior lien against the particular land for which they are exchanged, and upon failure to pay said bonds and interest thereon according to their terms, the lien of said bonds may be foreclosed by appropriate court action. [1937 c 104 § 1; 1923 c 154 § 5; RRS § 5812-5.]

*Reviser's note: "this act" appears in 1923 c 154 codified as RCW 43.64.010, 43.64.020, 43.12.140, 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, 76.12.140, and 76.12.150.

76.12.100 Bonds—Purchase price of land limited—Retirement of bonds. For the purpose of acquiring, seeding[,] reforestation and administering land for forests and of carrying out the provisions of *chapter 154 of the Laws of 1923, the state forest board is authorized to issue and dispose of utility bonds of the state of Washington in an amount not to exceed one hundred thousand dollars in principal during the biennium expiring March 31, 1951: *Provided, however,* That no sum in excess of one dollar per acre shall ever be paid or allowed either in cash, bonds, or otherwise, for any lands suitable for forest growth, but devoid of such, nor shall any sum in excess of three dollars per acre be paid or allowed either in cash, bonds, or otherwise, for any lands adequately restocked with young growth.

Any utility bonds issued under the provisions of this section may be retired from time to time, whenever there

is sufficient money in the forest development fund, said bonds to be retired at the discretion of the state forest board either in the order of issuance, or by first retiring bonds with the highest rate of interest. [1949 c 80 § 1; 1947 c 66 § 1; 1945 c 13 § 1; 1943 c 123 § 1; 1941 c 43 § 1; 1939 c 106 § 1; 1937 c 104 § 2; 1935 c 126 § 2; 1933 c 117 § 1; Rem. Supp. 1949 § 5812-11.]

***Reviser's note:** "chapter 154 of the Laws of 1923" was codified as RCW 43.64.010, 43.64.020, 43.12.140, 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, 76.12.140 and 76.12.150.

Forest development fund: See note following RCW 76.12.030.

76.12.110 Forest development account. There is created a forest development account in the state general fund. The state treasurer shall keep an account of all sums deposited therein and expended or withdrawn therefrom. Any sums placed in the account shall be pledged for the purpose of paying interest and principal on the bonds issued by the board, and for the purchase of land for growing timber. Any bonds issued shall constitute a first and prior claim and lien against the account for the payment of principal and interest. No sums for the above purposes shall be withdrawn or paid out of the account except upon approval of the board.

Appropriations may be made by the legislature from the forest development account to the department of natural resources for the purpose of carrying on the activities of the department on state forest lands, lands managed on a sustained yield basis as provided for in RCW 79.68.040, and for reimbursement of expenditures that have been made or may be made from the resource management cost account in the management of state forest lands. [1977 ex.s. c 159 § 1; 1959 c 314 § 1; 1951 c 149 § 1; 1933 c 118 § 2; 1923 c 154 § 6; RRS § 5812-6.]

Reviser's note: See note following RCW 76.12.030.

76.12.120 Sales and leases of timber, timber land, etc.—Disposition of revenue. All land, acquired or designated by the board as state forest land, shall be forever reserved from sale, but the timber and other products thereon may be sold or the land may be leased in the same manner and for the same purposes as is authorized for state granted land if the board finds such sale or lease to be in the best interests of the state and approves the terms and conditions thereof.

All money derived from the sale of timber or other products, or from lease, or from any other source from the land, except where the Constitution of this state or RCW 76.12.030 requires other disposition, shall be disposed of as follows:

(1) Fifty percent shall be placed in the forest development fund.

(2) Fifty percent shall be paid to the county in which the land is located to be paid, distributed, and prorated to the various funds in the same manner as general taxes are paid and distributed during the year of payment. [1971 ex.s. c 123 § 4; 1955 c 116 § 1; 1953 c 21 § 1; 1923 c 154 § 7; RRS § 5812-7.]

Christmas trees—Cutting, breaking, removing: RCW 79.40.070 and 79.40.080.

Forest development fund: See note following RCW 76.12.030.

76.12.140 Logging of land—Rules and regulations—Penalty. Any lands acquired by the state under the provisions of *chapter 154, Laws of 1923, or any amendments thereto, shall be logged, protected and cared for in such manner as to insure natural reforestation of such lands, and to that end the state forest board shall have power, and it shall be its duty to make rules and regulations, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slashings, and debris, and protection and promotion of new forests. All such rules and regulations, or amendments thereto, shall be adopted by majority vote of the state forest board by resolution and recorded in the minutes of the board, and shall be promulgated by publication in one issue of a newspaper of general circulation published at the state capitol, and shall take effect and be in force at the time specified therein. Any violation of any such rules and regulations shall be a gross misdemeanor. [1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3a); RRS § 5812-3a. Prior: 1921 c 169 § 2.]

***Reviser's note:** "chapter 154, Laws of 1923", see note following RCW 76.12.100.

76.12.155 Record of forest board proceedings, etc. The commissioner of public lands shall keep in his office in a permanent bound volume a record of all proceedings of the state forest board; and shall also keep a permanent bound record of all forest lands acquired by the state and any lands owned by the state and designated as such by the state forest board. The record shall show the date and from whom said lands were acquired; amount and method of payment therefor; the forest within which said lands are embraced; the legal description of such lands; the amount of money expended, if any, and the date thereof, for seeding, planting, maintenance or care for such lands; the amount, date and source of any income derived from such land; and such other information and data as may be required by the board. [1923 c 154 § 9; RRS § 5812-9. Formerly RCW 43.12.140.]

76.12.160 Sale or exchange of tree seedling stock and tree seed. The state supervisor of forestry is authorized to sell to or exchange with persons intending to restock forest areas, tree seedling stock and tree seed produced at the state nursery. [1947 c 67 § 1; Rem. Supp. 1947 § 5823-40.]

76.12.170 Use of proceeds specified. All receipts from the sale of stock or seed shall be deposited in a state forest nursery revolving fund to be maintained by the supervisor of forestry, who is hereby authorized to use all money in said fund for the maintenance of the state tree nursery or the planting of denuded state owned lands. [1947 c 67 § 2; RRS § 5823-41.]

Chapter 76.14

FOREST REHABILITATION

Sections

76.14.010	Definitions.
76.14.020	Yacolt burn designated high hazard area—Rehabilitation required.
76.14.030	Administration.
76.14.040	Duties of supervisor.
76.14.050	Firebreaks—Powers of board and supervisor—Grazing lands.
76.14.051	Firebreaks—Preexisting agreements not altered.
76.14.060	Powers and duties of supervisor—Private lands.
76.14.070	Powers and duties of supervisor—Expenditure of public funds.
76.14.080	Fire protection projects—Assessments—Payment.
76.14.090	Fire protection projects—Notice—Hearing.
76.14.100	Fire protection projects—Collection of assessments.
76.14.110	Fire protection projects—Credit on assessment for private expenditure.
76.14.120	Landowner's responsibility under other laws.
76.14.130	Lands not to be included in project.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.14.010 Definitions. As used in this chapter:

The term "supervisor" means the supervisor of forestry;

The term "board" means the state forest board;

The term "owner" means and includes individuals, partnerships, corporations, associations, federal land managing agencies, state of Washington, counties, municipalities, and other forest land owners;

"Forest land" means any lands considered best adapted for the growing of trees. [1953 c 74 § 2.]

76.14.020 Yacolt burn designated high hazard area—Rehabilitation required. The Yacolt burn situated in Clark, Skamania, and Cowlitz counties in townships 2, 3, 4, 5, 6 and 7 north, ranges 3, 4, 5, 6, 7, 7 1/2 and 8 east is hereby designated a high hazard forest area requiring rehabilitation by the establishment of extensive protection facilities and by the restocking of denuded areas artificially to restore the productivity of the land. [1953 c 74 § 1.]

76.14.030 Administration. This chapter shall be administered by the division of forestry under the guidance and approval of the state forest board. [1953 c 74 § 3.]

76.14.040 Duties of supervisor. The supervisor shall use funds placed at his disposal to map, survey, fell snags, build firebreaks and access roads, increase forest protection activities and do all work deemed necessary to protect forest lands from fire in the rehabilitation zone, and to perform reforestation and do other improvement work on state lands in the rehabilitation zone. [1955 c 171 § 1; 1953 c 74 § 4.]

76.14.050 Firebreaks—Powers of board and supervisor—Grazing lands. The supervisor is authorized to cooperate with owners of land located in the area described in RCW 76.14.020 in establishing firebreaks in their most logical position regardless of land ownership.

The board may by gift, purchase, condemnation or otherwise acquire easements for road rights of way and land or interests therein located in the high hazard forest area described in RCW 76.14.020 for any purpose deemed necessary for access for forest protection, reforestation, development and utilization, and for access to state owned lands within the area described in RCW 76.14.020 for all other purposes, and the supervisor shall have authority to regulate the use thereof. When the landowner is using the land for agricultural grazing purposes the state shall maintain gates or adequate cattle guards at each place the road enters upon the private landowner's fenced lands. [1975 1st ex.s. c 101 § 1; 1955 c 171 § 2; 1953 c 74 § 5.]

76.14.051 Firebreaks—Preexisting agreements not altered. Nothing in the provisions of RCW 76.14.050 as now or hereafter amended shall be construed to otherwise alter the terms of any existing agreements heretofore entered into by the state and private parties under the authority of RCW 76.14.050 as now or hereafter amended. [1975 1st ex.s. c 101 § 2.]

76.14.060 Powers and duties of supervisor—Private lands. The supervisor, subject to the guidance and approval of the board, shall have authority to acquire the right by purchase, condemnation or otherwise to cause snags on private land to be felled, slash to be disposed of, and to take such other measures on private land necessary to carry out the objectives of this chapter. [1955 c 171 § 3.]

76.14.070 Powers and duties of supervisor—Expenditure of public funds. The supervisor shall have authority subject to the guidance and approval of the board to expend public money for the purposes and objectives provided in this chapter. [1955 c 171 § 4.]

76.14.080 Fire protection projects—Assessments—Payment. The supervisor, with the guidance and approval of the board, shall develop fire protection projects within the high hazard forest area and shall determine the boundaries thereof in accordance with the lands benefited thereby and shall assess one-sixth of the cost of such projects equally upon all forest lands within the project on an acreage basis. Such assessment shall not, however, exceed twenty-five cents per acre annually nor more than one dollar and fifty cents per acre in the aggregate and shall constitute a lien upon any forest products harvested therefrom. The landowner may by written notice to the supervisor of forestry elect to pay his assessment on a deferred basis at a rate of ten cents per thousand board feet and/or one cent per Christmas tree when these products are harvested from the lands for commercial use until the assessment plus two percent interest from the date of completion of each project has been paid for each acre. Payments under the deferred plan shall be credited by forty acre tracts and shall be first applied to payment of the assessment against the forty acre tract from which the funds were derived and secondly to other forty acre tracts held and designated by the payor. In the event total ownership is less than

forty acres then payment shall be applied on an undivided basis to the entire areas as to which the assessment remains unpaid. The landowner who elects to pay on deferred basis may pay any unpaid assessment and interest at any time. [1955 c 171 § 5.]

76.14.090 Fire protection projects—Notice—Hearing. Notice of each project, the estimated assessment per acre and a description of the boundaries thereof shall be given by publication in a local newspaper of general circulation thirty days in advance of commencing work. Any person owning land within the project may within ten days after publication of notice demand a hearing before the supervisor in Olympia and present any reasons why he feels the assessment should not be made upon his land. Thereafter, the supervisor may change the boundaries of said project to eliminate land from the project which he determines in his discretion will not be benefited by the project. [1955 c 171 § 6.]

76.14.100 Fire protection projects—Collection of assessments. Except when the owner has notified the supervisor in writing that he will make payment on the deferred plan, the assessment shall be collected by the supervisor reporting the same to the county assessor of the county in which the property is situated upon completion of the work in that project and the assessor shall annually extend the amounts upon the tax rolls covering the property, and the amounts shall be collected in the same manner, by the same procedure, and with the same penalties attached as the next general state and county taxes on the same property are collected. Errors in assessments may be corrected at any time by the supervisor by certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments the county treasurer shall transmit them to the supervisor. Payment on the deferred plan shall be made directly to the supervisor. Such payment must be made by January 31st for any timber or Christmas trees harvested during the previous calendar year and must be accompanied by a statement of the amount of timber or number of Christmas trees harvested and the legal description of the property from which they were harvested. Whenever an owner paying on the deferred plan desires to pay any unpaid balance or portion thereof, he may make direct payment to the supervisor. [1955 c 171 § 7.]

Collection of taxes: Chapter 84.56 RCW.

76.14.110 Fire protection projects—Credit on assessment for private expenditure. Where the supervisor finds that a portion of the work in any project, except road building, has been done by private expenditures for fire protection purposes only and that the work was not required by other forestry laws having general application, then the supervisor shall appraise the work on the basis of what it would have cost the state and shall credit the amount of the appraisal toward payment of any sums assessed against lands contained in the project and owned by the person or his predecessors in title making the expenditure. Such appraisal shall be added

to the cost of the project for purposes of determining the general assessment. [1955 c 171 § 8.]

76.14.120 Landowner's responsibility under other laws. This chapter shall not relieve the landowner of providing adequate fire protection for forest land pursuant to RCW 76.04.360, as amended, or in lieu thereof of paying the fire patrol assessment specified, but shall be deemed as providing solely for extra fire protection needed in the extrahazardous fire area. [1955 c 171 § 9.]

76.14.130 Lands not to be included in project. Projects pursuant to RCW 76.14.080 shall not be developed to include lands outside the following described boundary within the high hazard forest areas: Beginning at a point on the east boundary of section 24, township 4 north, range 4 east 1/4 mile south of the northeast corner; thence west 1/4 mile; south 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; south 1/8 mile; west 1/4 mile; south 1/8 mile; west 1/2 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/2 mile; south 1/16 mile; west 3/4 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; west 1 3/4 miles to the west quarter corner of section 19, township 4 north, range 4 east. Thence north 1/4 mile; west 1/4 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 1/16 mile; north 1/4 mile; west 1/16 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 3/16 mile; south 1/8 mile; west 3/16 mile; south 1/8 mile; east 3/16 mile; south 1/4 mile; west 2 3/16 miles; south 1/8 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; east 1/4 mile; south 3/16 mile; east 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/16 mile; east 3/16 mile; south 7/16 mile; west 3/16 mile; south 1/4 mile; west 3/16 mile; south 1/4 mile; east 15/16 mile; south 1/4 mile; east 1/4 mile; south 1/4 mile; east 1/4 mile; south 3/4 mile; to the southwest corner of section 36, township 4 north, range 3 east. Thence west 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/2 mile; west 1/8 mile; south 3/8 mile; west 1/8 mile; south 1/4 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 3/8 mile; south 7/16 mile; west 1/4 mile; south 1/16 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; west 1/4 mile; south 1/4 mile; east 1/2 mile; south 3/16 mile; east 1/4 mile; south 1/16 mile; east 7/16 mile; south 3/16 mile; east 9/16 mile; south 1/4 mile; east 1/16 mile; south 1/4 mile; east 1/16 mile; south 1/8 mile; east 1/8 mile; south 1/8 mile; west 1/16 mile; south 5/8 mile; west 3/16 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/8 mile; south 3/16 mile; west 1/8 mile; south 1/16 mile; west 11/16 mile; south 3/16 mile; east 15/16 mile, being 1/16 mile north of the southeast corner of section 36, township 3 north, range 3 east. Thence east 1 mile; south 1/16 mile; west 7/8 mile; south 1/8 mile; east 1/4 mile; south 1/4 mile; west 1/8 mile; south 1/8 mile; west 3/16 mile; south 1/4 mile; west 7/16 mile; north 1/8 mile; west 1/8 mile; south 1/8 mile; west 5/16 mile; south 1/4 mile; west

3/16 mile; south 1/16 mile; east 1/2 mile; north 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 1/8 mile being the southeast corner of section 1, township 2 north, range 3 east. Thence south 1/4 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 3/8 mile; south 1/8 mile; east 1/16 mile; north 1/4 mile; east 7/16 mile; north 1/8 mile; east 9/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/16 mile; west 1/4 mile; south 5/16 mile; to the center of section 17, township 2 north, range 4 east. Thence east 1 mile; south 1/16 mile; east 2 miles; north 1/16 mile; east 1 1/2 miles; to the east quarter corner of section 13, township 2 north, range 4 east. Thence easterly 9 miles following Bonneville Power Administration's power transmission line through sections 18, 17, 16, 15, 14 and 13, township 2 north, range 5 east and sections 18, 17 and 16, township 2 north, range 6 east to the southeast corner of section 16, township 2 north, range 6 east. Thence easterly 3 3/4 miles; north 1 1/4 miles; east 1/4 mile; north 2 1/4 miles; west 3/4 mile; north 1 1/2 miles; east 3/4 mile; north 1/2 mile; east 1 mile; north 1/2 mile; east 1 mile; north 1 mile; east 2 miles; south 1 mile; east 1 mile; north 3 miles; to the northeast corner of section 1, township 3 north, range 7 east. Thence west 4 miles; south 1 mile; west 2 miles; north 1/2 mile; west 2 miles; south 1/2 mile; west 1 mile; south 1/2 mile; west 2 miles; north 1 1/2 miles; west 1 mile; south 1 mile; west 2 miles; south 1 1/2 miles; east 1 mile; south 1/2 mile; west 1 mile; south 1/2 mile; west 1/2 mile; south 1/2 mile; west 3 1/2 miles to the northwest corner of section 30, township 3 north, range 5 east. Thence north along Gifford Pinchot National Forest boundary to the point of beginning. [1955 c 171 § 10.]

Chapter 76.16

ACCESS TO STATE TIMBER AND OTHER VALUABLE MATERIAL

Sections	
76.16.010	Acquisition of property interests for access authorized—Maintenance.
76.16.020	Condemnation—Duty of attorney general.
76.16.030	Disposal of property interests acquired under this chapter.
76.16.040	Acquisition—Payment—Moneys available to department.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.16.010 Acquisition of property interests for access authorized—Maintenance. Whenever the department of natural resources, hereinafter referred to as the department, shall find it to be for the best interests of the state of Washington to acquire any property or use of a road in private ownership to afford access to state timber and other valuable material for the purpose of developing, caring for or selling the same, the acquisition

of such property, or use thereof, is hereby declared to be necessary for the public use of the state of Washington, and said department is hereby authorized to acquire such property or the use of such roads by gift, purchase, exchange or condemnation, and subject to all of the terms and conditions of such gift, purchase, exchange or decree of condemnation to maintain such property or roads as part of the department's land management road system. [1963 c 140 § 1; 1945 c 239 § 1; Rem. Supp. 1945 § 5823–30.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); chapter 8.04 RCW.

State lands subject to easements for removal of materials: RCW 79.01.312 and 79.36.230.

76.16.020 Condemnation—Duty of attorney general. The attorney general of the state of Washington is hereby required and authorized to condemn said property interests found to be necessary for the public purposes of the state of Washington, as provided in RCW 76.16.010, and upon being furnished with a certified copy of the resolution of the department, describing said property interests found to be necessary for the purposes set forth in RCW 76.16.010, the attorney general shall immediately take steps to acquire said property interests by exercising the state's right of eminent domain under the provisions of chapter 8.04 RCW, and in any condemnation action herein authorized, the resolution so describing the property interests found to be necessary for the purposes set forth above shall, in the absence of a showing of bad faith, arbitrary, capricious or fraudulent action, be conclusive as to the public use and real necessity for the acquisition of said property interests for a public purpose, and said property interests shall be awarded to the state without the necessity of either pleading or proving that the department was unable to agree with the owner or owners of said private property interest for its purchase. Any condemnation action herein authorized shall have precedence over all actions, except criminal actions, and shall be summarily tried and disposed of. [1963 c 140 § 2; 1945 c 239 § 2; Rem. Supp. 1945 § 5823–31.]

76.16.030 Disposal of property interests acquired under this chapter. In the event the department should determine that the property interests acquired under the authority of this chapter are no longer necessary for the purposes for which they were acquired, the department shall dispose of the same in the following manner, when in the discretion of the department it is to the best interests of the state of Washington to do so, except that property purchased with educational funds or held in trust for educational purposes shall be sold only in the same manner as are public lands of the state:

(1) Where the state property necessitating the acquisition of private property interests for access purposes under authority of this chapter is sold or exchanged, said acquired property interests may be sold or exchanged as an appurtenance of said state property when it is determined by the department that sale or exchange of said state property and acquired property interests as one parcel is in the best interests of the state.

(2) If said acquired property interests are not sold or exchanged as provided in the preceding subsection, the department shall notify the person or persons from whom the property interest was acquired, stating that said property interests are to be sold, and that said person or persons shall have the right to purchase the same at the appraised price. Said notice shall be given by registered letter or certified mail, return receipt requested, mailed to the last known address of said person or persons. If the address of said person or persons is unknown, said notice shall be published twice in an official newspaper of general circulation in the county where the lands or a portion thereof is located. The second notice shall be published not less than ten nor more than thirty days after the notice is first published. Said person or persons shall have thirty days after receipt of the registered letter or five days after the last date of publication, as the case may be, to notify the department, in writing, of their intent to purchase the offered property interest. The purchaser shall include with his notice of intention to purchase, cash payment, certified check or money order in an amount not less than one-third of the appraised price. No instrument conveying property interests shall issue from the department until the full price of the property is received by said department. All costs of publication required under this section shall be added to the appraised price and collected by the department upon sale of said property interests.

(3) If said property interests are not sold or exchanged as provided in the preceding subsections, the department shall notify the owners of land abutting said property interests in the same manner as provided in the preceding subsection and their notice of intent to purchase shall be given in the manner and in accordance with the same time limits as are set forth in the preceding subsection (2): *Provided*, That if more than one abutting owner gives notice of intent to purchase said property interests the department shall apportion them in relation to the lineal footage bordering each side of the property interests to be sold, and apportion the costs to the interested purchasers in relation thereto: *Provided further*, That no sale is authorized by this section unless the department is satisfied that the amounts to be received from the several purchasers will equal or exceed the appraised price of the entire parcel plus any costs of publishing notices.

(4) If no sale or exchange is consummated as provided in subsections (1), (2) and (3) hereof, the department shall sell said properties in the same manner as public lands of the state of Washington are sold.

(5) Any disposal of property interests authorized by this chapter shall be subject to any existing rights previously granted by the department. [1963 c 140 § 3; 1945 c 239 § 3; Rem. Supp. 1945 § 5823-32.]

76.16.040 Acquisition—Payment—Moneys available to department. The department in acquiring any property interests under the provisions of this chapter, either by purchase or condemnation, is hereby authorized to pay for the same out of any moneys available to the department of natural resources for this purpose.

[1963 c 140 § 4; 1945 c 239 § 4; Rem. Supp. 1945 § 5823-33.]

Chapter 76.20 FIREWOOD ON STATE LANDS

Sections	
76.20.010	License to remove firewood authorized.
76.20.020	Removal only for personal use.
76.20.030	Issuance of license—Fee—Limit on amount removed.
76.20.035	Removal of firewood without charge—Authorization.
76.20.040	Penalty.

76.20.010 License to remove firewood authorized. The department of natural resources may issue licenses to residents of this state to enter upon lands under the administration or jurisdiction of the department of natural resources for the purpose of removing therefrom, standing or downed timber which is unfit for any purpose except to be used as firewood. [1975 c 10 § 1; 1945 c 97 § 1; Rem. Supp. 1945 § 7797-40a.]

76.20.020 Removal only for personal use. In addition to other matters which may be required to be contained in the application for a license under this chapter the applicant must certify that the wood so removed is to be only for his own personal use and in his own home and that he will not dispose of it to any other person. [1945 c 97 § 2; Rem. Supp. 1945 § 7797-40b.]

76.20.030 Issuance of license—Fee—Limit on amount removed. The application may be made to the department of natural resources, and if deemed proper, the license may be issued upon the payment of two dollars and fifty cents which shall be paid into the treasury of the state by the officer collecting the same and placed in the resource management cost account; the license shall be dated as of the date of issuance and authorize the holder thereof to remove between the dates so specified not more than six cords of wood not fit for any use but as firewood for the use of himself and family from the premises described in the license under such regulations as the department of natural resources may prescribe. [1975 c 10 § 2; 1945 c 97 § 3; Rem. Supp. 1945 § 7797-40c.]

76.20.035 Removal of firewood without charge—Authorization. Whenever the department of natural resources determines that it is in the best interest of the state and there will be a benefit to the lands involved or a state program affecting such lands it may designate specific areas and authorize the general public to enter upon lands under its jurisdiction for the purposes of cutting and removing standing or downed timber for use as firewood for the personal use of the person so cutting and removing without a charge under such terms and conditions as it may require. [1975 c 10 § 3.]

76.20.040 Penalty. Any false statement made in the application or any violation of the provisions of this chapter shall constitute a gross misdemeanor and be

punishable as such. [1945 c 97 § 4; Rem. Supp. 1945 § 7797-40d.]

Chapter 76.24
TOLL LOGGING ROADS

Sections

- 76.24.010 Corporations may construct and operate—Powers.
- 76.24.020 Types of facilities enumerated.
- 76.24.030 Duties as carrier—Tolls—Lien.
- 76.24.040 Eminent domain—Reverter for nonuse.

76.24.010 Corporations may construct and operate—Powers. Any two or more persons may incorporate a company, having for its principal object the construction, maintenance and operation of logging roads, chutes, flumes and artificial water courses, or water ways and other ways, for the transportation of logs and other timber products. Such corporation shall have power to acquire, hold, use and transfer all such real and personal property as shall be reasonably necessary for carrying on the business of such corporation. [1905 c 82 § 1; RRS § 8395.]

76.24.020 Types of facilities enumerated. Such corporation shall have power to build, construct, maintain and operate logging roads, whether skid roads, railroads or any other kind, also chutes, flumes and artificial water courses, water ways and other ways, for the transportation of logs or any other timber products, together with all necessary yarding grounds, rollways and landings. [1905 c 82 § 2; RRS § 8396.]

76.24.030 Duties as carrier—Tolls—Lien. After any such logging road, way, chute, flume or artificial water course or other improvements shall have been constructed, such company shall transport all timber products offered to it for carriage as its means of transportation are adapted to carry, and such company shall have the right to charge reasonable tolls for the use thereof, which tolls shall be uniform, having due regard to the portion or length of any such logging road, way, chute, flume, or artificial water course or other improvements used by any person. Such company shall have a lien for the amount of its reasonable tolls and charges upon any and all logs or other timber products transported by it over its logging road, way, chute, flume or artificial water course. Notice of such lien shall be filed, and the same shall be foreclosed as provided by chapter 60.10 RCW and RCW 61.12.162. [1969 c 82 § 16; 1905 c 82 § 3; RRS § 8397.]

Labor liens: Chapter 60.32 RCW.

Lien for labor and services on timber and lumber: Chapter 60.24 RCW.

76.24.040 Eminent domain—Reverter for nonuse. Such companies shall be deemed quasi public companies and common carriers, and any such company shall have the right of eminent domain and shall have the right to appropriate and condemn lands and property for its use. Such right of condemnation and of eminent domain shall

be exercised in the same manner as is now, or may hereafter be, provided by law for the condemnation of property by ordinary railroad corporations exercising the right of eminent domain: *Provided*, That the right of eminent domain shall not be exercised by any such corporation with respect to any residence. *And provided further*, That any property acquired by such corporation under the provisions of this chapter by the exercise of the right of eminent domain shall be used exclusively for the purposes of this chapter; and whenever the use of such property as herein contemplated shall cease for the period of one year, the property shall revert to the original owner, his heirs or assigns. Nothing in this chapter shall be construed to authorize the taking or damaging of any power plant constructed or being constructed for the creation or utilization of water power. [1905 c 82 § 4; RRS § 8398.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); chapter 8.20 RCW.

Chapter 76.28
BOOM COMPANIES

Sections

- 76.28.010 Acquisition of property for booming, etc.—Eminent domain.
- 76.28.020 Plat or survey to be filed.
- 76.28.030 Boom facilities—Restrictions.
- 76.28.040 Tolls—Duty of company—Lien.
- 76.28.050 Duty in separating products.
- 76.28.060 Record of rafts.
- 76.28.070 Liability for loss or damage.
- 76.28.080 Additional liability for failure to assort and deliver.
- 76.28.090 Certain waters declared public highways—Boom companies declared public corporations.

Log patrol activities, duties concerning: Chapter 76.40 RCW.

76.28.010 Acquisition of property for booming, etc.—Eminent domain. Any corporation heretofore or hereafter organized in the state of Washington for the purpose of catching, booming, sorting, rafting and holding logs, lumber or other timber products, shall have power to acquire, hold, use and transfer all such real and personal property or estate, by lease or purchase, as shall be necessary for carrying on the business of said corporation. If such corporation shall not be able to agree with persons owning land, shore rights, or other property sought to be appropriated, as to the amount of compensation to be paid therefor, the compensation therefor may be assessed and determined and the appropriation made in the manner provided by law for the appropriation of private property by railways: *Provided*, That any property acquired under the provisions of this chapter by the exercise of the right of eminent domain shall be used exclusively for the purposes of this chapter; and whenever the use of said property as herein contemplated shall cease for a period of one year, the same shall revert to the original owner, his heirs or assigns, upon the repayment of the original cost of same. [1890 p 470 § 1; RRS § 8399.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); chapter 8.20 RCW.

76.28.020 Plat or survey to be filed. Any corporation hereafter organized for the purpose mentioned in RCW 76.28.010, shall within ninety days after its articles of incorporation have been filed, file in the office of the supervisor of forestry a plat or survey of so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated by the corporation. Such plat shall be made from the records of the United States Surveyor General, or by a competent surveyor, after actual survey. The corporation may from time to time whenever it desires to extend its operations to portions of streams not embraced in its original plat, or to other streams tributary to the stream or streams described in the original plat, or any portion of such streams, or in any manner to change, modify, or correct its original plat, file additional plats or surveys in the office of the supervisor of forestry, of so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for such purposes. Whenever, by reason of floods or otherwise, the channel of any stream is so changed as to put the stream beyond the limits of the original plat, or any supplemental or additional plat filed pursuant to the provisions of this section, the corporation may file in the office of the supervisor of forestry additional plats or surveys showing the change in the channel and so much of the shore lines of the waters of the state and lands contiguous thereto as are proposed to be appropriated for its purposes by the corporation, which shall vest it with the same rights that it acquired by the filing of the original plat. [1957 c 33 § 1; 1907 c 52 § 1; 1890 p 470 § 2; RRS § 8400.]

Reviser's note: The 1957 amendment of this section transferred the functions of the secretary of state to the supervisor of forestry; however, chapter 38, Laws of 1957 transfers the functions relating to booming companies to the newly created department of natural resources, see chapter 43.30 RCW, particularly RCW 43.30.110, 43.30.070, 43.30.080.

76.28.030 Boom facilities—Restrictions. Such corporations shall have power and are hereby authorized, in any of the waters of this state or the dividing waters thereof, to construct, maintain and use all necessary sheer or receiving booms, dolphins, piers, piles or other structure necessary or convenient for carrying on the business of such corporations: *Provided*, That such boom or booms, sheer booms or receiving booms shall be so constructed as to allow the free passage between any of such booms and the opposite shore for all boats, vessels or steam crafts of any kind whatsoever, or for ordinary purposes of navigation. [1890 p 471 § 3; RRS § 8401.]

76.28.040 Tolls—Duty of company—Lien. After such works have been constructed, the corporation shall catch, hold, and assort the logs and timber products of all persons requesting such service, upon the same terms and without discrimination. It shall have the right, in consideration of the convenience and security afforded to the public in the handling of logs and timber products, to charge and collect tolls on all logs or other timber products caught within its works and upon the

order or request of the owner or owners thereof, and there assorted, boomed, or rafted. The tolls shall not exceed one dollar and fifty cents per thousand feet on logs, spars, or other large timber, and reasonable rates on all other timber products. A corporation operating a boom at the mouth of any river, shall catch and hold, assort, boom, and raft all logs and timber products, except such as may be already in charge of the owner or his agents, without request of the owner, and it shall have the right to charge and collect tolls not to exceed one dollar and fifty cents per thousand feet for such service. The amount of logs or timber is to be board measure, to be ascertained by the usual legal method of scaling. The corporation shall have a lien upon the logs and timber products for the driving, floating, booming, sorting, and rafting thereof, and the right to foreclose such lien as provided in chapter 60.10 RCW and RCW 61.12.162. The corporation shall, as soon as practicable, deliver logs or other timber products caught within its booms, sorted and rafted ready for towing, to the owner thereof, and if required to hold such property for more than thirty days, shall have the right to charge a reasonable rate for such storage for the excess period. [1969 c 82 § 17; 1953 c 123 § 1; 1890 p 471 § 4; RRS § 8402.]

Lien for labor and services on timber and lumber: Chapter 60.24 RCW.

76.28.050 Duty in separating products. It shall be the duty of all said boom corporations, in assorting, to separate the logs, lumber or other timber products into separate booms ready for towing, so that logs or other timber products shall go to the mill or place intended for use or storage in one or more booms: *Provided*, That in case more than one boom is located on or in the same river or its tributaries, the corporation owning the upper boom or works shall pass free of charge all saw logs or other timber products consigned to the lower boom or booms. [1890 p 472 § 5; RRS § 8403.]

76.28.060 Record of rafts. It shall be the duty of every corporation organized and transacting business under the provisions of this chapter to keep in the office of its secretary, open to public inspection, a book or books in which shall be truly recorded the facts, so far as known, regarding each and every raft by it assorted. Such record shall specify: (1) Names of owners; (2) marks or brands; (3) number of logs in each boom; (4) number of feet in boom; (5) name of steamer receiving possession; (6) date of departure from boom. [1890 p 472 § 6; RRS § 8404.]

76.28.070 Liability for loss or damage. Corporations organized in accordance with the provisions of this chapter shall be liable to the owner or owners of logs or other timber products for all loss or damage resultant from neglect, carelessness or unnecessary delay on the part of servants of such corporations: *Provided*, That loss caused by fire and ice, which cannot be reasonably guarded against, shall not be construed as resultant upon neglect or carelessness on the part of the corporation. [1890 p 472 § 7; RRS § 8405.]

76.28.080 Additional liability for failure to assort and deliver. In addition to such damages as are herein provided for any corporation wilfully neglecting to assort and deliver such logs and timber products according to the provisions of this chapter, it shall be liable to a fine not exceeding twenty percent of the value of such property which it shall have failed to deliver, but no such corporation shall be liable to such damages or penalty if said owner or owners of such logs or timber products shall have failed to furnish the necessary boom sticks and chains to raft the same. [1890 p 472 § 8; RRS § 8406.]

76.28.090 Certain waters declared public highways—Boom companies declared public corporations. All meandered rivers, meandered sloughs and navigable waters in this state shall be deemed as public highways, and said corporations shall be declared public corporations for the purpose of this chapter; and the improvement of such streams, sloughs and waters shall be deemed and declared a public use and benefit. [1890 p 473 § 9; RRS § 8407.]

Chapter 76.32 LOG DRIVING COMPANIES

Sections

76.32.010	Formation of corporations—Object.
76.32.020	Acquisition of property—Eminent domain.
76.32.030	Plat or survey to be filed.
76.32.040	General powers and duties—Improvement of streams—Remonstrances.
76.32.050	Duty to drive timber products—Tolls—Liens.
76.32.060	Liability for loss or damage.
76.32.070	Rights to cease, when.
76.32.080	Boom companies may come under chapter.

76.32.010 Formation of corporations—Object. Any corporation having for its object, in whole or in part, the clearing out and improvement of rivers and streams in this state, and for the purpose of driving, sorting, holding and delivering logs and other timber products thereon, may be organized under the laws of this state, and in accordance with the provisions of the codes and statutes of Washington, as set down and numbered in volume 1 of Hill's Annotated Statutes and Codes of Washington, *sections 1497 to 1520, inclusive, and such corporations shall have all powers and be subject to all the liabilities and duties therein mentioned. [1895 c 72 § 1; RRS § 8408.]

*Reviser's note: "sections 1497 to 1520", Hill's Annotated Statutes and Codes, formed a part of the general corporation laws existing at the time of enactment of this section. Current laws on the subject matter now appear in Title 23A RCW.

76.32.020 Acquisition of property—Eminent domain. Such corporation shall have power to acquire, hold, use and transfer all such real and personal property or estate, by lease or purchase, as shall be necessary for carrying on the business of said corporation. If such corporation shall not be able to agree with persons owning land, shore rights or other property sought to be appropriated, as to the amount of compensation to be paid

therefor, the compensation therefor may be assessed and determined and the appropriation thereof be made in the manner provided by law for the appropriation of private property in *chapter 6 of title 9, volume 2, Hill's Annotated Statutes and Codes of Washington: *Provided*, That any property acquired under the provisions of this chapter for the purposes herein mentioned by the exercise of the right of eminent domain shall be used exclusively for the purposes aforesaid; and whenever the use of said property acquired by the right of eminent domain, as herein contemplated, shall cease for a period of one year, the same shall revert to the original owner, his heirs or assigns. [1895 c 72 § 2; RRS § 8409.]

*Reviser's note: "chapter 6 of title 9, volume 2, Hill's Annotated Statutes and Codes of Washington" is codified as RCW 8.20.010 through 8.20.140.

76.32.030 Plat or survey to be filed. Any corporation organized under this chapter shall within ninety days after its articles of incorporation have been filed, file in the office of the supervisor of forestry a plat or survey of so much of the shore lines of the waters of the state or of any of the rivers or streams thereof and lands contiguous thereto as are proposed to be appropriated by the corporation. Such plat shall be made from the records of the United States Surveyor General or by a competent surveyor, after actual survey. The corporation may from time to time whenever it desires to extend its operations to portions of streams not embraced in its original plat, or to other streams tributary to the stream or streams described in the original plat, or any portion of such streams, file additional plats in the office of the supervisor of forestry. Whenever by reason of floods or otherwise, the channel of any stream is so changed as to put the stream beyond the limits of the original plat, or any supplemental or additional plat filed pursuant to the provisions of this section, the corporation may file in the office of the supervisor of forestry supplemental plats showing the change in the channel which shall vest it with the same rights that it acquired by the filing of the original plat. [1957 c 34 § 1; 1905 c 119 § 1; 1895 c 72 § 3; RRS § 8410.]

Reviser's note: The 1957 amendment of this section transferred the functions of the secretary of state to the supervisor of forestry; however, chapter 38, Laws of 1957 transferred the functions relating to log driving companies to the newly created department of natural resources, see chapter 43.30 RCW, particularly RCW 43.30.110, 43.30.070, 43.30.080.

76.32.040 General powers and duties—Improvement of streams—Remonstrances. Such corporation shall have power and is hereby authorized in any of the rivers and streams of this state, or the dividing waters thereof, to remove jams, roots, snags and rocks, improve and straighten the channel, build wing dams and sheer booms, construct dams and gates, or otherwise, for the purpose of storing water with which to produce artificial freshets and for the purpose of holding logs and other timber products and in all ways to improve such streams and rivers for the purposes herein mentioned and contemplated. *Provided*, That no such wing dam, sheer

boom, dam with gate or otherwise, shall be so constructed, maintained or used as to in any manner obstruct or impede the outlet of such stream: *And provided further*, That if any such wing dam, sheer boom, dam with gate or otherwise shall be so constructed, maintained or used as to interfere with the use for any purpose of the waters of any stream so dammed or used, or any of its tributaries, or in any manner to injure or damage any lands adjacent to such stream or its tributaries, compensation for such interference with the use of such water and for any such injury or damage shall be first assessed and determined and the appropriation thereof may be made by the exercise of the power of eminent domain in the manner provided in RCW 76.32-.020: *Provided, however*, That whenever the owners of more than one-half of the land lying alongside or abutting on any stream affected by the tide, proposed to be improved according to this chapter, shall file with the board of county commissioners of the county in which said river is situated a remonstrance against any improvements of so much of the stream as is affected by the tide, it shall then be unlawful for any corporation to take the land or any slough within the territory owned by any such remonstrancers: *Provided*, That such remonstrance shall be filed with said board within fifteen days from the filing of said plat. Nothing in this chapter shall be construed to authorize the taking or damaging of any power plant constructed or being constructed for the creation or utilization of water power. [1905 c 57 § 1; 1897 c 31 § 1; 1895 c 72 § 4; RRS § 8411.]

76.32.050 Duty to drive timber products—Tolls—Liens. After such corporation has entered upon its duties, which shall be within three months of the filing of its maps of location, it shall operate in streams theretofore navigable, upon the request of the owners, and in the case of logs and other timber products which are commingled, or lying in such a position as to obstruct or impede the drive, without such request. When a navigable stream upon which it was not previously practicable to float logs or other timber products is improved by clearing out rocks, straightening the channel, or constructing wing dams and sheers, thereby aiding and assisting the floating of logs and other timber products, the corporation shall be entitled to driving charges on all logs or other timber products placed in the stream without a request to drive them, and in streams not navigable before such improvements were made, it shall without request, sluice, sack, and drive all logs and other timber products of suitable length that may be placed in the stream so improved, or that may be delivered into its ponds.

It shall handle all such logs and other timber products of all persons upon the same terms, without discrimination as to time of sluicing, sacking, and driving.

It shall be entitled to charge and collect reasonable and uniform tolls for such services and improvements, on all logs and other timber products handled, or sheered out of sloughs or off the bars by means of the improvements. Such tolls shall not exceed two dollars per thousand feet, board measure, on logs, spars or other large timber, and reasonable compensation on all other timber

products, such charges to be fixed by the board of trustees of the corporation in proportion to the distance the timber is to be driven and the number of dams through which it is necessarily sluiced or sheered. In case the corporation is also engaged in the booming and rafting of logs and other timber so sluiced, sacked, and driven, an additional sum not to exceed one dollar and twenty cents per thousand feet for logs, spars and other large timber, and reasonable compensation on all other timber products may be charged for the booming and rafting.

The amount of such logs and other products shall be determined by the usual method of scaling, and the corporation shall have a lien upon all logs and other timber products handled for sluicing, sacking, and driving, and for booming and rafting to be foreclosed as provided in chapter 60.10 RCW and RCW 61.12.162. [1969 c 82 § 18; 1953 c 124 § 1; 1909 c 229 § 1; 1901 c 140 § 1; 1895 c 72 § 5; RRS § 8412.]

76.32.060 Liability for loss or damage. Any corporation acting under and in accordance with the provisions of this chapter shall be liable to the owner or owners of logs or other timber products for all loss or damage resulting from neglect, carelessness or unnecessary delay on the part of such corporation or its agents. [1895 c 72 § 6; RRS § 8413.]

76.32.070 Rights to cease, when. Should any corporation neglect, for the period of eight months after improving any stream or river, to operate its dams, or to otherwise perform its duties as herein provided, then all rights herein conferred to such corporations upon such streams or rivers, or portions thereof, shall cease. [1895 c 72 § 7; RRS § 8414.]

76.32.080 Boom companies may come under chapter. Duly organized boom companies at present operating upon any of the streams or rivers of this state may file amended articles of incorporation to embrace the provisions of this chapter, and, for the purpose of time limitations mentioned in this chapter, the time of filing such amended articles of incorporation shall be deemed to be the time of organization thereof, but failure to comply with the provisions of this chapter shall work forfeiture of the rights of such corporations only so far as the same are subjoined under the provisions of this paragraph. [1895 c 72 § 8; RRS § 8415.]

Chapter 76.36 MARKS AND BRANDS

Sections	
76.36.010	Definitions.
76.36.020	Forest products and equipment to be marked.
76.36.030	Registration of marks or brands.
76.36.040	Assignment.
76.36.050	Certificate as evidence of registration and ownership.
76.36.060	Impression of mark—Presumption.
76.36.070	Cancellation of registration.
76.36.090	Catch brands.
76.36.100	Right of entry to retake branded products.
76.36.110	Penalties for false branding, etc.
76.36.120	Forgery of mark, etc.—Penalty.
76.36.130	Sufficiency of mark.

76.36.140	Application of chapter to eastern Washington.
76.36.150	Renewal of marks or brands—Effect of failure to renew—Abandoned marks or brands.
76.36.160	Deposit of fees.
76.36.900	Severability—1925 ex.s. c 154.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.36.010 Definitions. The words and phrases herein used, unless the same be clearly contrary to or inconsistent with the context of this chapter or the section in which used, shall be construed as follows:

(1) "Person" shall include the plural and all corporations, foreign and domestic, copartnerships, firms and associations of person.

(2) "Waters of this state" shall include any and all bodies of fresh and salt water within the jurisdiction of the state capable of being used for the transportation of forest products, and all rivers and lakes and their tributaries, harbors, bays, bayous and marshes.

(3) "Forest products" shall be taken to mean and include logs, spars, piles, and poles, boom sticks and shingle bolts and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a sawmill, shingle mill or tie mill, or cut into cord wood, stove wood or hewn ties.

(4) "Catch brand" shall be taken to mean a mark or brand used by a person as an identifying mark upon forest products and booming equipment previously owned by another.

(5) "Booming equipment" shall include boom sticks and boom chains. [1925 ex.s. c 154 § 1; RRS § 8381-1.]

76.36.020 Forest products and equipment to be marked. Every person who shall put into any of the waters of this state, or ship on any common carrier railroad for the purpose of floating or rafting in any of said waters, any forest products, or use any booming equipment as a part of his operation in securing, rafting or floating forest products, shall have a mark or brand, previously selected by him and registered in the manner hereinafter provided, plainly impressed or cut in a conspicuous place on each stick or piece of forest products so shipped on any common carrier railroad or put into any of said waters and on each piece of booming equipment so used. [1925 ex.s. c 154 § 2; RRS § 8381-2. Prior: 1890 p 110 § 1.]

76.36.030 Registration of marks or brands. Every person selecting a mark or brand, before using it, shall make application for the registration thereof in the office of the supervisor of forestry by depositing in that office an impression burned in a piece of leather of appropriate size, or a drawing thereof, together with, in duplicate a written statement duly signed and verified by him or his agent, containing a description of the mark or brand and declaring that such mark or brand is not, and at the time of its adoption by him was not, in use, to his knowledge, by any other person, and that he has selected it in good faith for marking or branding forest products to be transported on common carrier railroads, or

floated or rafted in the waters of this state, or booming equipment to be used by him as a part of his operations in securing, rafting, or floating forest products.

The supervisor of forestry, upon receipt of the application and the fee hereinafter provided, if he finds that the mark or brand is not identical with any other mark or brand registered in his office, or does not so closely resemble one registered therein as to be confounded therewith, shall file in his office the impression or drawing, and one copy of the written statement, and shall register the mark or brand in a book to be provided by him and kept for the purpose and known as the "Forest products brand register," entering therein the name of the owner, character of the mark or brand, date of registration, and such other details as he may see fit to enter therein. He shall return to the applicant the other copy of the written statement, with a certificate attached thereto and signed by him or his deputy to the effect that the mark or brand has been duly registered in accordance with the provisions of this chapter, and that the applicant is the registered owner thereof. The supervisor of forestry, in the event of his refusal to register a mark or brand on account of conflict with, or resemblance to, one already registered, shall immediately give notice of that fact to the applicant, who may select another mark or brand, and apply for its registration in the manner of an original application. [1957 c 36 § 1; 1925 ex.s. c 154 § 3; RRS § 8381-3. Prior: 1890 p 110 §§ 2, 3.]

76.36.040 Assignment. Every mark or brand registered under this chapter, shall be assignable in law; and the supervisor of forestry, upon presentation to him, in duplicate, of an assignment transferring the mark or brand to a person therein named and duly executed and acknowledged by the owner thereof and the payment of the fee hereinafter mentioned, shall file one copy of the assignment in his office and make an entry in the forest products brand register of the fact of the assignment, the date thereof and the name of the assignee, and such other details as he may see fit to enter therein. He shall then return to the assignee the other copy of the assignment, with a certificate attached thereto and signed by him or his deputy to the effect that the mark or brand has been duly registered in accordance with the provisions of this chapter and assigned to the assignee, and that the assignee is the registered owner thereof. The assignee, upon the due registration of the assignment, shall be and become the owner of the mark or brand with the full right of exclusive use to the same extent as though he had been the original owner. [1957 c 36 § 2; 1925 ex.s. c 154 § 4; RRS § 8381-4.]

76.36.050 Certificate as evidence of registration and ownership. The certificate of the supervisor of forestry, attached to the original or copy of the written statement or assignment, and signed by him or his deputy as herein provided, shall be received in all courts of this state as evidence of the due and proper registration of the mark or brand and of the ownership thereof without proof of the signature thereto. [1957 c 36 § 3; 1925 ex.s. c 154 § 5; RRS § 8381-5.]

76.36.060 Impression of mark—Presumption. All forest products and booming equipment having impressed thereupon a registered mark or brand shall be presumed to belong to the person appearing on the records in the office of the supervisor of forestry as the owner of such mark or brand. All forest products having impressed thereupon a registered catch brand shall be presumed to belong to the owner of the registered catch brand, unless there shall be impressed thereupon more than one registered catch brand, in which event they shall be presumed to belong to the owner whose registered catch brand was placed thereupon latest in point of time. [1957 c 36 § 4; 1925 ex.s. c 154 § 6; RRS § 8381-6. Prior: 1890 p 111 § 4.]

76.36.070 Cancellation of registration. The supervisor of forestry, upon the petition of the owner of a registered mark or brand, may cause the registration thereof to be canceled, and, in the event of such cancellation, the mark or brand shall be open to registration by any person subsequently applying therefor. [1957 c 36 § 5; 1925 ex.s. c 154 § 7; RRS § 8381-7.]

76.36.090 Catch brands. Every person desiring to use a catch brand as an identifying mark upon forest products or booming equipment purchased or lawfully acquired by him from another, shall before using it, make application for the registration thereof in the office of the supervisor of forestry in the manner prescribed for the registration of other marks or brands as herein required. The provisions contained in this chapter in reference to registration, certifications, assignment, and cancellation, and the fees to be paid to the supervisor of forestry shall apply equally to catch brands. The certificate of the supervisor of forestry shall designate the mark or brand as a catch brand, and the mark or brand selected by the applicant as a catch brand shall be inclosed in the letter C, which shall identify the mark or brand as, and shall be used only in connection with, a catch brand. [1957 c 36 § 6; 1925 ex.s. c 154 § 9; RRS § 8381-9.]

76.36.100 Right of entry to retake branded products. The owner of any mark or brand registered as herein provided, by himself or his duly authorized agent or representative, shall have a lawful right, at any time and in any peaceable manner, to enter into or upon any tidelands, marshes and beaches of this state and any mill, mill yard, mill boom, rafting or storage grounds and any forest products or raft or boom thereof, for the purpose of searching for any forest products and booming equipment having impressed thereupon or cut therein a registered mark or brand belonging to him and to retake any forest products and booming equipment so found by him. [1925 ex.s. c 154 § 10; RRS § 8381-10. Prior: 1901 c 123 § 4.]

76.36.110 Penalties for false branding, etc. Every person:

(1) Who shall put into any of the waters of this state, or ship on any common carrier railroad for the purpose of floating or rafting in any of said waters, any forest

products, or use any booming equipment as a part of his operation in securing, rafting or floating forest products, without having plainly impressed or cut in a conspicuous place on each stick or piece of forest products so put into any of the waters of this state or shipped on any common carrier railroad, and on each piece of booming equipment so used, a mark or brand previously registered as required by the terms of this chapter; or,

(2) Except boom companies and log patrol companies organized as corporations for the purpose of catching or reclaiming and holding or disposing of forest products for the benefit of the owners, and authorized to do business under the laws of this state, who shall have or take in tow or into his custody or possession or under his control, without the authorization of the owner of a registered mark or brand thereupon, any forest products or booming equipment having thereupon a mark or brand registered as required by the terms of this chapter, or, with or without such authorization, any forest products or booming equipment required to be branded under the terms of this chapter with a registered mark or brand and having no registered mark or brand impressed thereupon or cut therein; or,

(3) Who shall impress upon or cut in any forest products or booming equipment a mark or brand that is false, forged or counterfeit; or,

(4) Who shall interfere with, prevent or obstruct the owner of any registered mark or brand, or his duly authorized agent or representative, entering into or upon any tidelands, marshes or beaches of this state or any mill, mill site, mill yard or mill boom or rafting or storage grounds or any forest products or any raft or boom thereof for the purpose of searching for forest products and booming equipment having impressed thereupon a registered mark or brand belonging to him or retaking any forest products or booming equipment so found by him; or,

(5) Who shall impress or cut a catch brand that shall not have been registered under the terms of this chapter upon or into any forest products or booming equipment upon which there is or should be a registered mark or brand as required by the terms of this chapter or a catch brand, whether registered or not, upon any forest products or booming equipment that shall not have been purchased or lawfully acquired by him from the owner; shall be guilty of a gross misdemeanor. [1925 ex.s. c 154 § 11; RRS § 8381-11. Prior: 1890 p 112 § 8.]

76.36.120 Forgery of mark, etc.—Penalty. Every person who, with an intent to injure or defraud the owner:

(1) Shall falsely make, forge or counterfeit a mark or brand registered as herein provided and use it in marking or branding forest products or booming equipment; or,

(2) Shall cut out, destroy, alter, deface, or obliterate any registered mark or brand impressed upon or cut into any forest products or booming equipment; or,

(3) Shall sell, encumber or otherwise dispose of or deal in, or appropriate to his own use, any forest products or booming equipment having impressed thereupon

a mark or brand registered as required by the terms of this chapter; or

(4) Shall buy or otherwise acquire or deal in any forest products or booming equipment having impressed thereupon a registered mark or brand;

Shall be guilty of a felony. [1925 ex.s. c 154 § 12; RRS § 8381-12. Prior: 1890 p 111 §§ 6, 7.]

76.36.130 Sufficiency of mark. A mark or brand cut in boom sticks with an ax or other sharp instrument shall be sufficient for the purposes of this chapter if it substantially conforms to the impression or drawing and written description on file in the office of the supervisor of forestry. [1957 c 36 § 7; 1925 ex.s. c 154 § 13; RRS § 8381-13.]

76.36.140 Application of chapter to eastern Washington. In view of the different conditions existing in the logging industry of this state between the parts of the state lying respectively east and west of the crest of the Cascade mountains, forest products may be put into the water of this state or shipped on common carrier railroads without having thereon a registered mark or brand, as herein required, within that portion of the state lying east of the crest of the Cascade mountains and composed of the following counties to wit: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima; and the penalties herein provided for failure to mark or brand such forest products shall not apply: *Provided*, That any person operating within such east portion of the state may select a mark or brand and cause it to be registered in the office of the supervisor of forestry pursuant to the terms of this chapter, and use it for the purpose of marking or branding forest products and booming equipment, and, in the event of the registration of such mark or brand and the use of it in marking or branding forest products or booming equipment, the provisions hereof shall apply as to the forest products and booming equipment so marked or branded. [1957 c 36 § 8; 1925 ex.s. c 154 § 14; RRS § 8381-14.]

76.36.150 Renewal of marks or brands—Effect of failure to renew—Abandoned marks or brands. The supervisor of forestry shall on or before September 30, 1949, and each five-year period thereafter, notify by registered letter the owner or owners of all log marks or brands then of record in the state, to renew the same. A fee of five dollars shall be charged for new brands or marks, assignment of brands or marks and renewing marks or brands. Upon receipt of said fee, the supervisor of forestry shall give a renewal certificate, which shall give the holder and owner thereof the exclusive right to continue the use of said mark or brand within the state. If any owner or owners of a mark or brand which is on record fails to pay such renewing fee within three months after the notification as herein provided, such brand shall become forfeited and no longer be carried on said records.

On and after January 1, 1950, no person, firm, association, or corporation shall claim or own any log mark or brand which has not been renewed in accordance with the provisions of this section, and any failure to renew the log mark or brand as required by such provisions shall be deemed the abandonment of the same, and any other person, firm, association, or corporation shall be at liberty to adopt or use such mark or brand so abandoned: *Provided*, That no person, firm, association, or corporation shall be at liberty to claim or use such abandoned mark or brand until after the same has been recorded in his or its own name, in the manner provided in this chapter: *Provided, however*, That no abandoned or canceled brand may be reissued for a period of one year after such abandonment or cancellation, except to the previous owner or his assignee: *Provided further*, That in case of a dispute as to the right to the use of such mark or brand, the supervisor of forestry shall determine which of the applicants is entitled to the use thereof. [1957 c 36 § 9; 1949 c 216 § 1; Rem. Supp. 1949 § 8381-16.]

76.36.160 Deposit of fees. The supervisor of forestry shall deposit all moneys received under this chapter in the log patrol revolving fund. [1957 c 36 § 10.]

76.36.900 Severability—1925 ex.s. c 154. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1925 ex.s. c 154 § 15; RRS § 8381-15.]

Chapter 76.40 LOG PATROLS

Sections	
76.40.010	Definitions.
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76.40.127	Denial, revocation, suspension of license.
76.40.128	Denial, revocation, suspension of license—Reparation as condition to issuance or reinstatement.
76.40.130	Penalties—Criminal—Civil actions.

76.40.900 Severability—1947 c 116.
76.40.910 Construction—1947 c 116.

Reviser's note: The powers and duties of certain agencies mentioned in this chapter have devolved upon the department of natural resources, see note following Title 76 RCW digest.

76.40.010 Definitions. Words and phrases herein used, unless clearly contrary to or inconsistent with the context of this chapter or the section in which used, shall be construed as follows:

(1) "Log Patrol" includes all activities in connection with the recapture, repossession, and delivery to owners or to boom companies of stray logs in this state except activities by the owner of such logs, the transportation agency that towed or transported the booms or cargo from which such stray logs were lost, or any other duly constituted agent of the owner;

(2) "Stray logs" means and includes any and all logs, piling, poles, and boom sticks having a merchantable value that are adrift or have been adrift and stranded on beaches, marshes, or tidal and shorelands which have escaped in any manner from the owner or from a transportation agency, from storage or while being transported;

(3) "Person" includes the plural and all corporations foreign and domestic, copartnerships, firms, and associations of persons;

(4) "Boom company" means a company organized and operating under the authority of chapter 76.28 RCW.

(5) "Waters of this state" include any and all bodies of fresh and salt water including all rivers and lakes and their tributaries, harbors, bays, bayous, and marshes within the jurisdiction of the state capable of being used for the transportation or storage of stray logs. [1957 c 182 § 1. Prior: (i) 1947 c 116 § 2; Rem. Supp. 1947 § 8415-11. (ii) 1947 c 116 § 7; Rem. Supp. 1947 § 8415-16.]

76.40.012 Enforcement of chapter. It shall be the duty of the supervisor of forestry to administer and enforce the provisions of this chapter. [1955 c 108 § 1; 1953 c 140 § 2.]

76.40.013 Rules and regulations—Penalty for violation. The supervisor of forestry may adopt and enforce such reasonable rules and regulations as may be consistent with and necessary to carry out the provisions of this chapter relating to log patrols. Any violation of a rule or regulation prescribed by the supervisor of forestry under this chapter shall be punishable as a misdemeanor. [1957 c 182 § 9.]

76.40.015 Log patrol revolving fund. (Effective until July 1, 1981.) The department of revenue shall create, maintain and administer outside the state treasury a permanent revolving fund, to be known as the "log patrol revolving fund," in which shall be deposited all moneys received by it under this chapter. Such revolving fund shall be used to pay the salaries, wages and other operating expenses arising under the administration of this chapter, and whenever there are moneys in excess of ten thousand dollars in the revolving fund, such excess

moneys shall, at the end of each bimonthly period commencing July 1, 1953, be remitted by the department of revenue to the state treasurer, and shall be deposited to the credit of the permanent school fund.

Before any payroll or expense voucher is charged against the revolving fund, it shall be signed by the supervisor of forestry and approved by the department of revenue. All moneys shall be paid from the revolving fund by check or voucher. [1979 c 107 § 7; 1953 c 140 § 1.]

Reviser's note: This section repealed effective July 1, 1981, by 1979 1st ex.s. c 67 § 19.

76.40.016 Expenses—Payment. (Effective until July 1, 1981.) Current expenses arising under the administration of this chapter shall be paid from the log patrol revolving fund. [1979 c 107 § 8; 1953 c 140 § 13.]

Reviser's note: This section repealed effective July 1, 1981, by 1979 1st ex.s. c 67 § 19.

76.40.020 Compliance with chapter required. It shall be unlawful for any person, firm, association or corporation to hold any stray log or to directly or indirectly engage in the activities of a log patrol on or adjacent to the waters of this state, except that area in the state of Washington on the Columbia River above Grand Coulee Dam drained by the Columbia River and its tributaries, and except as hereinafter provided. Nothing in this chapter shall be construed to deprive any person of any right to take nonmerchantable unbranded stray logs for his own domestic use. [1957 c 182 § 2; 1955 c 27 § 1; 1953 c 140 § 9; 1947 c 116 § 1; Rem. Supp. 1947 § 8415-10.]

76.40.030 Log patrol license—Bond—Equipment stickers or devices—Fees. (Effective until July 1, 1981.) Before any person may engage in log patrol activities he must have an existing license from the state therefor. Before any license is issued the applicant must apply to the department of natural resources on a form to be prescribed by said department. The application must contain the name and address of the applicant or applicants, the name, type, and size of equipment to be used, and the mailing address of the principal place of business at which address process may be served upon the applicant. Before any license may be issued the applicant must execute and file with said department, to be approved by it, a surety bond running to the state in the sum of five thousand dollars, conditioned that the applicant will comply with all the requirements of the laws of the state governing such activities, and will account for all stray logs taken into possession. Each application shall be accompanied by a remittance of one hundred dollars for each boat or truck to be used or operated in such activities by the licensee or agent. All licenses shall expire on June 30th following the date of issuance. The department shall issue each applicant a license and shall also issue distinctive stickers or other suitable devices for each piece of equipment listed in the application identifying it as engaged in log patrol activities. A fee of four dollars shall be paid for each pair of such stickers or devices used. [1963 c 12 § 1; 1957 c 182 § 3; 1955 c 108 §

3; 1953 c 140 § 10; 1947 c 116 § 3; Rem. Supp. 1947 § 8415-12.]

76.40.030 Log patrol license—Bond—Equipment stickers or devices—Fees. (Effective July 1, 1981.) (1) Before any person may engage in log patrol activities he must have an existing license from the state therefor. Before any license is issued the applicant must apply to the department of natural resources on a form to be prescribed by said department. The application must contain the name and address of the applicant or applicants, the name, type, and size of equipment to be used, and the mailing address of the principal place of business at which address process may be served upon the applicant. Before any license may be issued the applicant must execute and file with said department, to be approved by it, a surety bond running to the state in the sum of five thousand dollars, conditioned that the applicant will comply with all the requirements of the laws of the state governing such activities, and will account for all stray logs taken into possession. Each application shall be accompanied by a remittance of one hundred dollars for each boat or truck to be used or operated in such activities by the licensee or agent. All licenses shall expire on June 30th following the date of issuance. The department shall issue each applicant a license and shall also issue distinctive stickers or other suitable devices for each piece of equipment listed in the application identifying it as engaged in log patrol activities. A fee of four dollars shall be paid for each pair of such stickers or devices used.

(2) All moneys received by the department under this chapter or chapter 76.42 RCW shall be deposited in the general fund. [1979 1st ex.s. c 67 § 13; 1963 c 12 § 1; 1957 c 182 § 3; 1955 c 108 § 3; 1953 c 140 § 10; 1947 c 116 § 3; Rem. Supp. 1947 § 8415-12.]

Effective date—1979 1st ex.s. c 67: See note following RCW 76.06.110.

Severability—1979 1st ex.s. c 67: See note following RCW 19.28.330.

76.40.040 Identifying equipment device to be displayed. It shall be unlawful for any licensee or his agent to engage in the activities of a log patrol without having at all times displayed on each side of each piece of licensed equipment the distinctive device identifying it as a log patrol issued by the supervisor of forestry. [1957 c 182 § 4; 1947 c 116 § 4; Rem. Supp. 1947 § 8415-13.]

76.40.050 Duties of log patrol, boom company, or other agency, on recovery of stray logs—Compensation. (1) All stray logs shall, whenever practicable, be returned to the owner or his agent; otherwise they shall be delivered to a boom company or other agency, approved by the supervisor of forestry and which is regularly engaged in the commercial booming business or the marketing of logs and adequately equipped for sorting, rafting and handling of logs loose or in rafts, which maintains such records as are designated by the supervisor of forestry for handling stray logs, and the log patrol shall be entitled to a reasonable compensation, not to exceed the maximum herein provided, for the recovery

and return of such logs, and shall have all the rights incident to a logger's lien therefor; *Provided*, That where there is no boom company or other agency, approved by the supervisor of forestry, within reasonable proximity to the place where stray logs are, or may be recovered, the supervisor of forestry is authorized to approve a plan for processing such logs by some other agency to accomplish the purpose herein provided to be performed by such boom companies or other agency; *Provided*, That no log patrol shall take into possession any stray logs during the time that the owner, his agent, or the transportation agency which lost said stray logs, are attempting, or are awaiting favorable weather conditions, to attempt to recover said stray logs.

(2) A boom company or other agency, approved by the supervisor of forestry, upon receipt of such stray logs, shall give adequate receipt therefor and promptly thereafter shall cause them to be scaled by a log scaling bureau or by an individual log scaler approved by the supervisor of forestry, whose regular and established business is that of scaling logs. A copy of each scale certificate shall immediately be forwarded to the division of forestry and to the log patrol which delivered said logs to such boom company or other agency. Thereafter at least ten days subsequent to the mailing of a detailed sales notice specifying time and place and date of sale to all prospective purchasers requesting such notices such boom company or other agency with reasonable promptness shall offer for sale such stray logs in the open market to the person making the highest offer and from the proceeds pay the log patrol for services performed, a sum which shall not exceed sixty percent of the current selling price of logs of the same grade and type, or fifteen dollars per thousand feet board measure for merchantable logs of number three grade or better, whichever sum is greater, unless written authority for the payment of a higher rate is given in advance by the owner of said stray logs or his agent or unless a different rate is approved by the supervisor of forestry in exceptional cases and on adequate proof of the necessity therefor; *Provided*, That in the event such stray logs are not of sufficient quantity, or are not located within reasonable proximity to a market conducive to competitive bidding in bringing the highest price therefor, or in the event any raft or small parcel of logs shall contain ten percent by scaled volume or less of stray logs, the said stray logs may be sold by the boom company or other agency approved by the supervisor of forestry pursuant to rules and regulations prescribed for such sales. From such proceeds, the boom company or other approved agency shall deduct the usual and customary handling charges, and at such regular intervals as may be required by the supervisor of forestry commencing after July 1, 1953, and not less frequently than every six months, pay to the owner the balance; *Provided*, That the net proceeds from unbranded stray logs, and branded stray logs the owner of which cannot be determined by existing records, shall be forwarded to the division of forestry. [1957 c 182 § 5; 1953 c 140 § 11; 1947 c 116 § 5; Rem. Supp. 1947 § 8415-14.]

Lien for labor and service on timber and lumber: Chapter 60.24 RCW.

76.40.060 Presumption as to branded logs. Branded and marked logs, boom sticks and boom chains shall be presumed to be the property of the person in whose name the brand or catch brand thereon imprinted is registered in the office of the secretary of state. [1947 c 116 § 6; Rem. Supp. 1947 § 8415-15.]

76.40.070 Recovery of boom sticks and chains—Compensation—Notice to owner—Sale. Branded or marked boom sticks and boom chains shall be held by the log patrol, boom company or approved agency for the owner as identified by the registered brand or mark thereon, and when claimed by the owner the log patrol, boom company or approved agency shall be entitled to receive reasonable compensation not to exceed ten dollars per boom stick and five dollars per boom chain and shall have all the rights incident to a logger's lien therefor. Upon receipt of such boom sticks, the log patrol, the boom company, or other approved agency shall notify the owner who shall have sixty days to recover said boom sticks upon payment of such reasonable compensation for its recovery. If the owner fails, neglects, or refuses to claim his boom sticks within such period after notice, they may be sold as stray logs. [1957 c 182 § 6; 1947 c 116 § 8; Rem. Supp. 1947 § 8415-17.]

Lien for labor and service on timber and lumber: Chapter 60.24 RCW.

76.40.080 Presumption arising from possession. Any log patrol having possession of stray logs, boom sticks or boom chains, except as herein provided shall be presumed to have and hold possession of same with intent to deprive and defraud the owner thereof and such possession shall be prima facie evidence of intent to defraud. [1947 c 116 § 9; Rem. Supp. 1947 § 8415-18.]

76.40.090 Notice to patrol not to take possession. Whenever the owner of any logs, boom sticks or chains, shall notify a log patrol by registered mail, addressed to the place of business listed in the application for license, not to take into possession any logs, boom sticks or chains, belonging to such owner and designating the brands and marks, then it shall be unlawful for such log patrol to thereafter take possession of any logs, boom sticks or chains bearing such brands or marks, until thirty days after such property has been lost from the owner, the agent, storage grounds, or transportation agency, or until such time as such notice has been rescinded by notice thereof served in the same manner. [1947 c 116 § 10; Rem. Supp. 1947 § 8415-19.]

76.40.100 Conversion of boom sticks or chains. It shall be unlawful for any log patrol or any other person without the consent of the owner, to take into possession with intent to sell, or for any person to buy boom sticks or chains, or to manufacture boom sticks into lumber or other wooden products without the written consent of the owner. [1947 c 116 § 11; Rem. Supp. 1947 § 8415-20.]

76.40.110 Unlawful to acquire or process certain logs. It shall be unlawful to purchase, or otherwise acquire stray logs other than from the owner, or from a boom company or other approved agency as provided in this chapter, or to process or manufacture products from logs acquired in contravention of the provisions of this section or to possess such logs for such purpose. [1957 c 182 § 7; 1953 c 140 § 12; 1947 c 116 § 12; Rem. Supp. 1947 § 8415-21.]

76.40.120 Record to be kept. Every log patrol shall keep, at the place of business listed in its application, open to public inspection, during office hours, such permanent record as will be a tabulation of its log patrol activities. [1947 c 116 § 14; RRS § 8412-23.]

76.40.122 Investigations—Hearings—Subpoenas—Oaths. The supervisor of forestry may investigate upon his own initiative the records of any licensee under this chapter or boom company or any person applying for a license, or any activities of the log patrol, or the making of false statements in any application for a license, and, for such purpose, may examine at the place of business of the licensee or boom company that portion of the ledgers, books of account, or other records relating to log patrol activities. The supervisor may also make such investigation as he considers appropriate at the place of business of any person who handles logs that are within the terms of this chapter, except the owner or his agent, but such investigation shall be limited to such ledgers, books of account or other records as relate to stray logs and the activities of licensees under this chapter. For the purpose of hearing, and for the purpose of ascertaining any facts concerning log patrol activities, the supervisor of forestry shall have the powers of a superior court to issue subpoenas compelling the attendance of witnesses, and the production of ledgers, books of account or other records before it, and to administer oaths and take evidence of such witnesses under oath concerning log patrol activities or violations of this chapter. The supervisor of forestry shall issue subpoenas to such witnesses as the licensee may require to present such facts as are considered relevant. [1953 c 140 § 3.]

76.40.124 Violations by applicant or licensee—Hearing—Notice. In the event the supervisor of forestry has reason to suspect that any licensee or applicant is violating or has violated the provisions of this chapter, he shall attempt to secure a satisfactory explanation and failing to secure an explanation, he shall cause a notice to be mailed to such licensee or applicant by registered mail to the place of business listed in the license, setting forth the provisions of this chapter which the licensee or applicant is charged with violating, and setting a date in the notice upon which a hearing will be had to determine whether or not the licensee or applicant is violating or has violated such provisions or has made any false statements in the application for a license. [1953 c 140 § 4.]

76.40.125 Violations by licensee—Remedy of owner—Procedure. If any licensee takes possession of

or sells or delivers or fails to deliver any logs, in contravention of the provisions of this chapter, the owner of the logs or his agent or the transportation agency which lost any of the logs may make written demand upon the licensee by registered mail to the place of business listed in the license to deliver the stray logs, as provided in this chapter, to the owner or his agent or to a boom company, or, if the logs are not stray logs or were taken into possession in contravention of this chapter, to deliver the logs to the owner or his agent or the transportation agency. Upon failure to comply with the demand within forty-eight hours, the owner or his agent or the transportation agency may file with the supervisor of forestry a copy of the demand, together with an affidavit setting forth the particulars in which affiant believes that this chapter has been violated, the approximate number of logs involved, the value of the logs, and, if the affiant believes the logs are in the possession of the licensee, the body of water or the county in which affiant believes the logs are located. The supervisor of forestry may thereupon make demand upon the licensee to deliver the logs as provided in this chapter or give a satisfactory explanation or make a settlement with the owner, his agent or the transportation agency. If the licensee fails to comply with the demand within seven days the supervisor of forestry shall notify the licensee that a hearing will be held at a specified time and place to determine whether the supervisor of forestry should revoke or suspend the license of the licensee. [1955 c 108 § 6; 1953 c 140 § 5.]

76.40.127 Denial, revocation, suspension of license. The supervisor of forestry may upon giving notice to the licensee or the applicant, hold hearings to determine whether a license should be revoked or suspended or the application for a license denied and to find whether any person has been injured by reason of any violation of this chapter by the licensee or applicant. If the supervisor of forestry at such hearing finds that the licensee or applicant has been guilty of any violation of the provisions of this chapter or of any rule or regulation adopted pursuant to the authority granted in this chapter, or has made false statements on the application for a license, or of any report or return required to be made by such licensee, he shall revoke, suspend or deny the application therefor. [1957 c 182 § 8; 1955 c 108 § 7; 1953 c 140 § 6.]

76.40.128 Denial, revocation, suspension of license—Reparation as condition to issuance or reinstatement. The supervisor of forestry, in the order revoking or suspending a license or denying the application for a license, may provide in the order that before the licensee's license will be reinstated or a new one issued to him, he shall make reparation in such amount as the supervisor of forestry believes reasonable, just and equitable, to any person found at the hearing to have been injured as a result of the licensee's violation of the provisions of this chapter. [1955 c 108 § 8; 1953 c 140 § 7.]

76.40.130 Penalties—Criminal—Civil actions. Any violation of this chapter shall be a gross misdemeanor. In addition thereto, the owner who has been deprived of the use, benefit or possession of any stray logs, boom sticks or boom chains, in violation of this chapter, shall have a right of civil action to recover for himself in damages from any person causing such deprivation, including the purchaser of such stray logs, boom sticks and boom chains. [1947 c 116 § 13; Rem. Supp. 1947 § 8415-22.]

76.40.900 Severability—1947 c 116. If any section, phrase, provision or clause hereof shall be held ineffectual for any reason or unconstitutional, that shall not affect the validity of the remaining portions of said act. [1947 c 116 § 15; no RRS.]

76.40.910 Construction—1947 c 116. In case of conflict with any existing provision of law, the provisions hereof shall prevail. [1947 c 116 § 16; Rem. Supp. 1947 § 8415-24.]

Chapter 76.42

WOOD DEBRIS—REMOVAL FROM NAVIGABLE WATERS

Sections

76.42.010	Removal of debris authorized—Enforcement of chapter—Department of natural resources.
76.42.020	Definitions.
76.42.030	Removal of wood debris—Authorized.
76.42.040	Debris removal account—Created—Disbursements authorized.
76.42.050	Debris removal account—Transfer of funds from log patrol revolving fund, authorized.
76.42.060	Navigable waters—Unlawful to deposit wood debris into—Exception.
76.42.070	Rules and regulations—Administration of chapter—Authority to adopt and enforce.

Navigation and harbor improvements: Title 88 RCW.

76.42.010 Removal of debris authorized—Enforcement of chapter—Department of natural resources. This chapter authorizes the removal of wood debris from navigable waters of the state of Washington. It shall be the duty of the department of natural resources to administer and enforce the provisions of this chapter. [1973 c 136 § 2.]

76.42.020 Definitions. "Wood debris" as used in this chapter is wood that is adrift on navigable waters or has been adrift thereon and stranded on beaches, marshes, or *navigable [tidal] and shorelands and which is not merchantable or economically salvageable under the Log Patrol Act, chapter 76.40 RCW.

"Removal" as used in this chapter shall include all activities necessary for the collection and disposal of such wood debris: *Provided*, That nothing herein provided shall permit removal of wood debris from private property without written consent of the owner. [1973 c 136 § 3.]

*Reviser's note: Apparently an error in engrossing caused the term "or navigable and shorelands" to appear where "or tidal and shorelands" was intended.

76.42.030 Removal of wood debris—Authorized. The department of natural resources may by contract, license, or permit, or other arrangements, cause such wood debris to be removed by licensed log patrolmen, other private contractors, department of natural resources employees, or by other public bodies. Nothing contained in this chapter shall prohibit any individual from using any nonmerchantable wood debris for his own personal use. [1973 c 136 § 4.]

76.42.040 Debris removal account—Created—Disbursements authorized. (Effective until July 1, 1981.) The department of natural resources shall create, maintain, and administer within the log patrol revolving fund a separate account to be known as the debris removal account. This account shall consist of moneys recovered from the sale of debris as defined in RCW 76.42.020, and the moneys transferred from the log patrol revolving fund as provided in RCW 76.42.050. This account shall be used to pay for removal of wood debris, and for salaries, wages, and other operating expenses arising under the administration of this chapter. [1973 c 136 § 5.]

Reviser's note: This section repealed effective July 1, 1981, by 1979 1st ex.s. c 67 § 19.

76.42.050 Debris removal account—Transfer of funds from log patrol revolving fund, authorized. (Effective until July 1, 1981.) Moneys may be transferred within the log patrol revolving fund to the debris removal account not to exceed fifty percent of the total revenue of the log patrol revolving fund during each bi-monthly period. The debris removal account balance shall not exceed ten thousand dollars and shall be in addition to the amount specified in RCW 76.40.015. [1973 c 136 § 6.]

Reviser's note: This section repealed effective July 1, 1981, by 1979 1st ex.s. c 67 § 19.

76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception. It shall be unlawful to dispose of wood debris by depositing such material into any of the navigable waters of this state, except as authorized by law including any discharge or deposit allowed to be made under and in compliance with chapter 90.48 RCW and any rules or regulations duly promulgated thereunder. Violation of this section shall be a misdemeanor. [1973 c 136 § 7.]

76.42.070 Rules and regulations—Administration of chapter—Authority to adopt and enforce. The department of natural resources shall adopt and enforce such rules and regulations as may be deemed necessary for administering this chapter. [1973 c 136 § 8.]

[Title 76 RCW (1979 Ed.)—p 48]

Chapter 76.44

INSTITUTE OF FOREST RESOURCES

(Formerly: Institute of forest products)

Sections

76.44.010	Institute created.
76.44.020	Administration of institute—Commission.
76.44.022	Members of commission—Terms.
76.44.030	Duties.
76.44.040	Dissemination of research results.
76.44.050	Contributions may be accepted.

Department of commerce and economic development: Chapter 43.31 RCW.

76.44.010 Institute created. There is hereby created the institute of forest resources of the state of Washington which shall operate under the authority of the board of regents of the University of Washington. [1979 c 50 § 1; 1947 c 177 § 1; Rem. Supp. 1947 § 10831-1.]

Severability—1979 c 50: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 50 § 8.]

76.44.020 Administration of institute—Commission. The institute of forest resources shall be administered by the dean of the college of forest resources of the University of Washington who shall also be the director of the institute with the advice of a nonsalaried commission which shall function in a role of review, oversight, and policy formulation for the institute and which shall annually report their findings and recommendations to the president for consideration. [1979 c 50 § 2; 1959 c 306 § 1; 1947 c 177 § 2; Rem. Supp. 1947 § 10831-2.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.022 Members of commission—Terms. The institute of forest resources' advisory commission shall consist of eight members appointed by the president of the university, six of whom shall be named from the visiting committee to the college of forest resources and two who shall represent the labor of the state. The state supervisor of the department of natural resources, the director of the pacific northwest forest and range experiment station, and the dean of the college of agriculture at Washington State University shall serve as ex officio members. The terms of the initial eight members shall be as follows: Three members shall serve for a term of two years, three members shall serve for a term of three years, and two members shall serve for a term of four years, respectively. The successors of the members initially appointed shall be appointed for terms of three years. [1979 c 50 § 3.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.030 Duties. The institute of forest resources shall pursue research and education related to the forest resource and its multiple use including its conservation, management and utilization; its evaluation of forest land use and the maintenance of its rural environment; the manufacture and marketing of forest products and the provision of recreation and aesthetic values.

In pursuit of these objectives, the institute of forest resources is authorized to cooperate with other universities, state and federal agencies, industrial institutions, domestic or foreign, where such cooperation advances these objectives. [1979 c 50 § 5; 1947 c 177 § 3; Rem. Supp. 1947 § 10831-3.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.040 Dissemination of research results. The results of any research undertaken by the institute or in which the institute participates shall be available to all industries and citizens of the state of Washington and the institute is authorized to disseminate such information. [1979 c 50 § 6; 1947 c 177 § 4; Rem. Supp. 1947 § 10831-4.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.050 Contributions may be accepted. The institute is authorized to solicit and/or accept funds through grants, contracts, or institutional consulting arrangements for the prosecution of any research or education activity which it may undertake in pursuit of its objectives. [1979 c 50 § 7; 1947 c 177 § 5; Rem. Supp. 1947 § 10831-5.]

Severability—1979 c 50: See note following RCW 76.44.010.

Chapter 76.48

SPECIALIZED FOREST PRODUCTS

Sections	
76.48.010	Declaration of public interest.
76.48.020	Definitions.
76.48.030	Unlawful acts.
76.48.040	Agencies responsible for enforcement of chapter.
76.48.050	Specialized forest products permits—Expiration—Specifications.
76.48.060	Specialized forest products permits—Required—Forms—Filing.
76.48.070	Transporting or possessing cedar or other specialized forest products—Requirements.
76.48.075	Specialized forest products from out-of-state.
76.48.080	Contents of authorization, sales invoice, or bill of lading.
76.48.092	Surrender of copy of specialized forest products permit to permittee following stipulated use—Penalty.
76.48.094	Cedar processors—Records of purchase, possession or retention of cedar products and salvage.
76.48.096	Cedar processors—Obtaining from suppliers not having specialized forest products permit unlawful.
76.48.098	Cedar processors—Display of valid registration certificate required.
76.48.100	Exemptions.
76.48.110	Violations—Seizure and disposition of products—Disposition of proceeds.
76.48.120	False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty.
76.48.130	Penalties.
76.48.140	Disposition of fines.
76.48.900	Severability—1967 ex.s. c 47.
76.48.901	Severability—1977 ex.s. c 147.
76.48.902	Severability—1979 1st ex.s. c 94.
76.48.910	Saving—1967 ex.s. c 47.

76.48.010 Declaration of public interest. It is in the public interest of this state to protect a great natural resource and to provide a high degree of protection to the landowners of the state of Washington from the theft of specialized forest products. [1967 ex.s. c 47 § 2.]

76.48.020 Definitions. Unless otherwise required by the context, as used in this chapter:

(1) "Christmas trees" shall mean any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

(2) "Native ornamental trees and shrubs" shall mean any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(3) "Cut or picked evergreen foliage," commonly known as brush, shall mean evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, and other cut or picked evergreen products.

(4) "Cedar products" shall mean cedar shakeboards, shake and shingle bolts, and rounds one to three feet in length.

(5) "Cedar salvage" shall mean cedar chunks, slabs, stumps, and logs having a volume greater than one cubic foot and being harvested or transported from areas not associated with the concurrent logging of timber stands (a) under a forest practices application approved or notification received by the department of natural resources, or (b) under a contract or permit issued by an agency of the United States government.

(6) "Processed cedar products" shall mean cedar shakes, shingles, fence posts, hop poles, pickets, stakes, or rails; or rounds less than one foot in length.

(7) "Cedar processor" shall mean any person who purchases and/or takes or retains possession of cedar products or cedar salvage, for later sale in the same or modified form, following their removal and delivery from the land where harvested.

(8) "Cascara bark" shall mean the bark of a Cascara tree.

(9) "Specialized forest products" shall mean Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, and Cascara bark.

(10) "Person" shall include the plural and all corporations foreign or domestic, copartnerships, firms, and associations of persons.

(11) "Harvest" shall mean to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection with or contact with the land or vegetation upon which it was or has been growing, or (b) from the position in which it has been lying upon such land.

(12) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site, including but not limited to conveyance by a motorized vehicle designed for use on improved roadways, or by vessel, barge, raft, or other waterborne conveyance. "Transportation" also means any conveyance of specialized forest products by helicopter.

(13) "Landowner" means, with regard to any real property, the private owner thereof, the state of Washington or any political subdivision thereof, the federal government, or any person who by deed, contract, or lease has authority to harvest and sell forest products of the property. "Landowner" does not include the purchaser or successful high bidder at any public or private timber sale.

(14) "Authorization" means a properly completed preprinted form authorizing the transportation or possession of Christmas trees, which form contains the information required by RCW 76.48.080, and a sample of which is filed before the harvesting occurs with the sheriff of the county in which the harvesting is to occur.

(15) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.

(16) "Specialized forest products permit" shall mean a printed document in a form specified by the department of natural resources, or true copy thereof, signed by a landowner or his duly authorized agent or representative (herein referred to as "permitter"), and validated by the county sheriff, authorizing a designated person (herein referred to as "permittee"), who shall also have signed the permit, to harvest and/or transport a designated specialized forest product from land owned or controlled and specified by the permitter, located in the county where such permit is issued.

(17) "Sheriff" means, for the purpose of validating specialized forest products permits, the county sheriff, deputy sheriff, or an authorized employee of the sheriff's office.

(18) "True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and permitter signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittee and permitter specify an earlier date. A permitter may require the actual signatures of both the permittee and permitter for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and permitter, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof. [1979 1st ex.s. c 94 § 1; 1977 ex.s. c 147 § 1; 1967 ex.s. c 47 § 3.]

76.48.030 Unlawful acts. It shall be unlawful for any person to:

(1) Harvest specialized forest products as described in RCW 76.48.020, in the quantities specified in RCW 76.48.060, without first obtaining a validated specialized forest products permit;

(2) Engage in activities or phases of harvesting specialized forest products not authorized by the permit; or

(3) Harvest specialized forest products in any lesser quantities than those specified in RCW 76.48.060, as now or hereafter amended, without first obtaining permission from the landowner or his duly authorized agent or representative. [1979 1st ex.s. c 94 § 2; 1977 ex.s. c 147 § 2; 1967 ex.s. c 47 § 4.]

76.48.040 Agencies responsible for enforcement of chapter. Agencies charged with the enforcement of this chapter shall include, but not be limited to, the Washington state patrol, county sheriffs and their deputies, county or municipal police forces, authorized personnel of the United States forest service, and authorized personnel of the departments of natural resources, fisheries, and game. Primary enforcement responsibility lies in the county sheriffs and their deputies. [1979 1st ex.s. c 94 § 3; 1977 ex.s. c 147 § 3; 1967 ex.s. c 47 § 5.]

76.48.050 Specialized forest products permits—Expiration—Specifications. Specialized forest products permits shall consist of properly completed permit forms validated by the sheriff of the county in which the specialized forest products are to be harvested. All specialized forest products permits shall expire at the end of the calendar year in which issued, or sooner, at the discretion of the permitter. A properly completed specialized forest products permit form shall include:

- (1) The date of its execution and expiration;
- (2) The name, address, telephone number, if any, and signature of the permitter;
- (3) The name, address, telephone number, if any, and signature of the permittee;
- (4) The type of specialized forest products to be harvested or transported;
- (5) The approximate amount or volume of specialized forest products to be harvested or transported;
- (6) The legal description of the property from which the specialized forest products are to be harvested or transported, including the name of the county, or the state or province if outside the state of Washington;
- (7) A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;
- (8) Any other condition or limitation which the permitter may specify. [1979 1st ex.s. c 94 § 4; 1977 ex.s. c 147 § 4; 1967 ex.s. c 47 § 6.]

76.48.060 Specialized forest products permits—Required—Forms—Filing. A specialized forest products permit validated by the county sheriff shall be obtained by any person prior to harvesting from any lands, including his own, more than five Christmas trees, more than five ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any cedar products, cedar salvage, processed cedar products, or more than five pounds of Cascara bark. Specialized forest products permit forms shall be provided by the department of natural resources, and shall be made available through the office of the county sheriff to permittees or permitters in reasonable quantities. A permit form shall be completed in triplicate for each permitter's

property on which a permittee harvests specialized forest products. A properly completed permit form shall be mailed or presented for validation to the sheriff of the county in which the specialized forest products are to be harvested. Before a permit form is validated by the sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form and the sheriff may conduct such other investigations as deemed necessary to determine the validity of the information alleged on the form. When the sheriff is reasonably satisfied as to the truth of such information, the form shall be validated with the sheriff's validation stamp provided by the department of natural resources. Upon validation, the form shall become the specialized forest products permit authorizing the harvesting, possession and/or transportation of specialized forest products, subject to any other conditions or limitations which the permittor may specify. Two copies of the permit shall be given or mailed to the permittor, or one copy shall be given or mailed to the permittor and the other copy given or mailed to the permittee. The original permit shall be retained in the office of the county sheriff validating the permit. In the event a single land ownership is situated in two or more counties, a specialized forest product permit shall be completed as to the land situated in each county. While engaged in harvesting of specialized forest products, permittees, or their agents or employees, must have readily available at each harvest site a valid permit or true copy of the permit. [1979 1st ex.s. c 94 § 5; 1977 ex.s. c 147 § 5; 1967 ex.s. c 47 § 7.]

76.48.070 Transporting or possessing cedar or other specialized forest products—Requirements. (1) Except as provided in RCW 76.48.100 and 76.48.075, it shall be unlawful for any person (a) to possess, and/or (b) to transport within the state of Washington, subject to any other conditions or limitations specified in the specialized forest products permit by the permittor, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any processed cedar products, or more than five pounds of Cascara bark without having in his possession a written authorization, sales invoice, bill of lading, or specialized forest products permit or a true copy thereof evidencing his title to or authority to have possession of specialized forest products being so possessed or transported.

(2) It shall be unlawful for any person (a) to possess and/or (b) to transport within the state of Washington any cedar products or cedar salvage without having in his possession a specialized forest products permit or a true copy thereof evidencing his title to or authority to have possession of the materials being so possessed or transported. [1979 1st ex.s. c 94 § 6; 1977 ex.s. c 147 § 6; 1967 ex.s. c 47 § 8.]

76.48.075 Specialized forest products from out-of-state. (1) It is unlawful for any person to transport or cause to be transported into this state from any other state or province specialized forest products, except

those harvested from that person's own property, without: (a) First acquiring and having readily available for inspection a document indicating the true origin of the specialized forest products as being outside the state, or (b) without acquiring a specialized forest products permit as provided in subsection (4) of this section.

(2) Any person transporting or causing to be transported specialized forest products into this state from any other state or province shall, upon request of any person to whom the specialized forest products are sold or delivered or upon request of any law enforcement officer, prepare and sign a statement indicating the true origin of the specialized forest products, the date of delivery, and the license number of the vehicle making delivery, and shall leave the statement with the person making the request.

(3) It is unlawful for any person to possess specialized forest products, transported into this state, with knowledge that the products were introduced into this state in violation of this chapter.

(4) When any person transporting or causing to be transported into this state specialized forest products elects to acquire a specialized forest products permit, the specialized forest products transported into this state shall be deemed to be harvested in the county of entry, and the sheriff of that county may validate the permit as if the products were so harvested, except that the permit shall also indicate the actual harvest site outside the state.

(5) A cedar processor shall comply with RCW 76.48.096 by requiring a person transporting specialized forest products into this state from any other state or province to display a specialized forest products permit, or true copy thereof, or other document indicating the true origin of the specialized forest products as being outside the state. The cedar processor shall make and maintain a record of the purchase, taking possession, or retention of cedar products and cedar salvage in compliance with RCW 76.48.094.

(6) If, pursuant to official inquiry, investigation, or other authorized proceeding regarding specialized forest products not covered by a valid specialized forest products permit or other acceptable document, the inspecting law enforcement officer has probable cause to believe that the specialized forest products were harvested in this state or wrongfully obtained in another state or province, the officer may take into custody and detain, for a reasonable time, the specialized forest products, all supporting documents, invoices, and bills of lading, and the vehicle in which the products were transported until the true origin of the specialized forest products can be determined. [1979 1st ex.s. c 94 § 15.]

76.48.080 Contents of authorization, sales invoice, or bill of lading. The authorization, sales invoice, or bill of lading required by RCW 76.48.070 shall specify:

- (1) The date of its execution.
- (2) The number and type of products sold or being transported.
- (3) The name and address of the owner, vendor, or donor of the specialized forest products.

(4) The name and address of the vendee, donee, or receiver of the specialized forest products.

(5) The location of origin of the specialized forest products. [1979 1st ex.s. c 94 § 7; 1967 ex.s. c 47 § 9.]

76.48.092 Surrender of copy of specialized forest products permit to permittee following stipulated use—Penalty. Following the stipulated use of a true copy of a specialized forest products permit, an agent or employee of a permittee shall surrender said copy to the permittee. A wilful failure to surrender the same to the permittee is a gross misdemeanor and punishable as provided by law. [1979 1st ex.s. c 94 § 8; 1977 ex.s. c 147 § 14.]

76.48.094 Cedar processors—Records of purchase, possession or retention of cedar products and salvage. Cedar processors shall make and maintain a record of the purchase, taking possession, or retention of cedar products and cedar salvage for at least one year after the date of receipt. The record shall be legible and shall include the date of delivery, the license number of the vehicle delivering the products, the driver's name, and the specialized forest products permit number or the information provided for in RCW 76.48.075(5). The record must be made at the time each delivery is made. [1979 1st ex.s. c 94 § 9; 1977 ex.s. c 147 § 11.]

76.48.096 Cedar processors—Obtaining from suppliers not having specialized forest products permit unlawful. It shall be unlawful for any cedar processor to purchase, take possession, or retain cedar products or cedar salvage subsequent to the harvesting and prior to the retail sale of such products, unless the supplier thereof displays a specialized forest products permit, or true copy thereof, which appears to be valid, or obtains the information pursuant to RCW 76.48.075(5). [1979 1st ex.s. c 94 § 10; 1977 ex.s. c 147 § 12.]

76.48.098 Cedar processors—Display of valid registration certificate required. Every cedar processor shall prominently display a valid registration certificate, or copy thereof, obtained from the department of revenue pursuant to RCW 82.32.030 at each location where such processor receives cedar products or cedar salvage.

Permittees shall sell cedar products or cedar salvage only to cedar processors displaying registration certificates which appear to be valid. [1979 1st ex.s. c 94 § 11; 1977 ex.s. c 147 § 13.]

76.48.100 Exemptions. The provisions of this chapter shall not apply to:

(1) Nursery grown products.

(2) Logs (except as included in the definition of "cedar salvage" under RCW 76.48.020), poles, pilings, or other major forest products from which substantially all of the limbs and branches have been removed, and cedar salvage when harvested concurrently with timber stands (a) under an approved forest practices application or notification, or (b) under a contract or permit issued by an agency of the United States government.

(3) The activities of a landowner, his agent, or representative, or of a lessee of land in carrying on noncommercial property management, maintenance, or improvements on or in connection with the land of such landowner or lessee. [1979 1st ex.s. c 94 § 12; 1977 ex.s. c 147 § 7; 1967 ex.s. c 47 § 11.]

76.48.110 Violations—Seizure and disposition of products—Disposition of proceeds. Whenever any law enforcement officer has probable cause to believe that a person is harvesting or is in possession of or transporting specialized forest products in violation of the provisions of this chapter, he may, at the time of making an arrest, seize and take possession of any such specialized forest products found. The law enforcement officer shall provide reasonable protection for the specialized forest products involved during the period of litigation or he shall dispose of such specialized forest products at the discretion or order of the court before which the arrested person is ordered to appear.

Upon any disposition of the case by the court, the court shall make a reasonable effort to return the specialized forest products to their rightful owner or pay the proceeds of any sale of specialized forest products less any reasonable expenses of such sale to the rightful owner. If for any reason, the proceeds of such sale cannot be disposed of to the rightful owner, such proceeds, less the reasonable expenses of the sale, shall be paid to the treasurer of the county in which the violation occurred. The county treasurer shall deposit the same in the county general fund. The return of the specialized forest products or the payment of the proceeds of any sale of products seized to the owner shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter. [1979 1st ex.s. c 94 § 13; 1977 ex.s. c 147 § 8; 1967 ex.s. c 47 § 12.]

76.48.120 False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty. It shall be unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other instrument in writing purporting to be a specialized forest products permit, or true copy thereof, authorization, sales invoice, or bill of lading, or to make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, knowing the same to be in any manner false, fraudulent, forged, or stolen.

Any person who knowingly or intentionally violates this section shall be guilty of forgery, and shall be punished as a class C felony providing for imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both such imprisonment and fine.

Whenever any law enforcement officer reasonably suspects that a specialized forest products permit or true copy thereof, authorization, sales invoice, or bill of lading is forged, fraudulent, or stolen, it may be retained by the officer until its authenticity can be verified. [1979

1st ex.s. c 94 § 14; 1977 ex.s. c 147 § 9; 1967 ex.s. c 47 § 13.]

76.48.130 Penalties. Any person who violates any provision of this chapter, other than the provisions contained in RCW 76.48.120, as now or hereafter amended, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not to exceed one year or by both such fine and imprisonment. [1977 ex.s. c 147 § 10; 1967 ex.s. c 47 § 14.]

76.48.140 Disposition of fines. All fines collected for violations of any provision of this chapter shall be paid into the general fund of the county treasury of the county in which the violation occurred. [1977 ex.s. c 147 § 15.]

76.48.900 Severability—1967 ex.s. c 47. If any section, provision, or part thereof of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1967 ex.s. c 47 § 15.]

76.48.901 Severability—1977 ex.s. c 147. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 147 § 16.]

76.48.902 Severability—1979 1st ex.s. c 94. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 1st ex.s. c 94 § 17.]

76.48.910 Saving—1967 ex.s. c 47. This chapter is not intended to repeal or modify any provision of existing law. [1967 ex.s. c 47 § 16.]

or protecting the land when the department determines that such services are not otherwise available at a cost which would encourage the landowner to so avail himself, and that the use of department equipment, materials, or personnel will not jeopardize the management of state lands or other programs of the department. The department shall enter into a contractual agreement with the landowner for services rendered and shall recover the costs thereof. [1979 c 100 § 2.]

76.52.030 Extending department forest management services to landowners. The department may, by agreement, extend forest management services to private lands as a condition of carrying out such services on state lands when the private lands are adjacent to or in close proximity to the state lands being treated. The agreement shall include provisions requiring the parties to pay all costs attributable to the conducting of the services on their respective lands. [1979 c 100 § 3.]

76.52.040 Disposition of funds from landowners. Costs recovered by the department as a result of extending forest management practices to private lands shall be credited to the program or programs providing the services. The department will report by December 31 of each odd numbered year up to and including 1985 to the house and senate natural resources committees the private acres treated as a result of this chapter. [1979 c 100 § 4.]

Chapter 76.52

COOPERATIVE FOREST MANAGEMENT SERVICES ACT

Sections	
76.52.010	Short title.
76.52.020	Contracts with landowners.
76.52.030	Extending department forest management services to landowners.
76.52.040	Disposition of funds from landowners.

76.52.010 Short title. This chapter shall be known and cited as the "cooperative forest management services act." [1979 c 100 § 1.]

76.52.020 Contracts with landowners. The department of natural resources may, by agreement, make available to forest landowners, equipment, materials, and personnel for the purpose of more intensively managing

Title 77

GAME AND GAME FISH

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Chapter 77.04

DEPARTMENT OF GAME

Sections

77.04.010	Short title.
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77.04.030	Game commission—Appointment.
77.04.040	Qualifications of members.
77.04.050	Removal of members.
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77.04.080	Powers of director.

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Refunds from motor vehicle fund of amounts taxed as snowmobile fuel—Crediting—Use: RCW 46.10.150.
Thermal power plant site evaluation council, director a member: RCW 80.50.030.
Treasurer's duty to refund snowmobile fuel tax to general fund—Crediting—Use: RCW 46.10.150.

77.04.010 Short title. This title shall be known and may be cited as "Game Code of the State of Washington." [1955 c 36 § 77.04.010. Prior: 1947 c 275 § 1; Rem. Supp. 1947 § 5992–11.]

77.04.020 Composition of department of game. The department of game shall consist of the state game commission and the director of game. The director of game shall have charge and general supervision of the department of game and may appoint and employ such game protectors, deputy game protectors, and such clerical and other assistants as may be necessary for the general administration of the department.

No person shall be eligible to appointment as director of game unless he has practical knowledge of the habits and distribution of the wild animals, wild birds and game fish of this state. [1955 c 36 § 77.04.020. Prior: 1947 c 275 § 2; Rem. Supp. 1947 § 5992–12.]

77.04.030 Game commission—Appointment. The governor shall appoint a state game commission, which shall consist of six electors of the state, to hold office for terms of six years each from the date of their appointment, or until their successors are appointed and qualified, unless sooner removed as hereinafter provided. At least three of them shall be residents of that portion of the state lying east of the summit of the Cascade mountains, and at least three shall be residents of that portion of the state lying west of the summit of the Cascade mountains. No two members shall be residents of the same county.

Of the members of the commission first appointed, two, one of whom resides east of the summit of the Cascade mountains and one of whom resides west of the summit of the Cascade mountains, shall be appointed for a term of six years each; two, one of whom resides east of the summit of the Cascade mountains, and one of whom resides west of the summit of the Cascade mountains, shall be appointed for a term of four years each; and two, one of whom resides east of the summit of the Cascade mountains and one of whom resides west of the summit of the Cascade mountains, shall be appointed for a term of two years each. [1955 c 36 § 77.04.030. Prior: 1947 c 275 § 3; Rem. Supp. 1947 § 5992–13.]

77.04.040 Qualifications of members. No person shall be eligible to appointment as a member of the state game commission unless he has general knowledge of the habits and distribution of wild animals, wild birds and game fish in the state, or who holds any other state, county, or municipal elective or appointive office. [1955 c 36 § 77.04.040. Prior: 1947 c 275 § 4; Rem. Supp. 1947 § 5992–14.]

77.04.050 Removal of members. The governor may remove any game commissioner for inefficiency, neglect of duty, or misconduct in office, giving him a copy of the charges against him, and an opportunity of being publicly heard in person, or by counsel in his own defense, upon not less than ten days' notice. If such commissioner is removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against the commissioner and his findings thereon, together with a complete record of the proceedings, and there shall be no right of review in any court whatsoever. [1955 c 36 § 77.04.050. Prior: 1947 c 275 § 5; Rem. Supp. 1947 § 5992-15.]

77.04.060 Meetings—Officers—Selection of director—Compensation, travel expenses—Annual report—Office. The state game commission shall hold regular meetings on the first Mondays of January, April, July, and October of each year, and special meetings at such times as may be called by the chairman or by two-thirds majority of the members.

The commission at its first regular meeting after the appointment and qualification of its membership, shall meet at the state capitol and organize by electing one of its members as chairman to serve for a term of two years, and until his successor is elected and qualified, and biennially thereafter the commission shall meet at its office and elect one of its members as chairman, who shall serve for a term of two years and until his successor is elected and qualified.

At such meeting, and at any other meeting after a vacancy in the office of the director of game has occurred, the commission shall elect a director of game by a two-thirds vote of its membership, who shall hold office at the pleasure of the commission. The director shall receive such salary as shall be fixed by the governor in accordance with the provisions of RCW 43.03.040. The said director shall be ex officio secretary of the state game commission, attend its meetings, keep a record of the business transacted by it, and perform such other duties as the commission may direct.

Each member of the commission shall receive twenty-five dollars for each day actually spent in the performance of official duties and travel expenses in connection therewith in going to, attending, and returning from meetings of the commission in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

The commission shall make a full and complete report of the official business transacted by it each year.

The commission shall maintain its offices in the principal office of the department of game. [1977 c 75 § 89; 1975-'76 2nd ex.s. c 34 § 175; 1961 c 307 § 9; 1955 c 352 § 1; 1955 c 36 § 77.04.060. Prior: 1949 c 205 § 1; 1947 c 275 § 6; Rem. Supp. 1949 § 5992-16.]

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

77.04.080 Powers of director. The director of game shall exercise all powers and perform all duties prescribed by law, and rules and regulations of the commission. [1955 c 36 § 77.04.080. Prior: 1947 c 275 § 8; Rem. Supp. 1947 § 5992-18.]

Chapter 77.08

GENERAL TERMS DEFINED

Sections

77.08.010
77.08.020

77.08.030
77.08.040
77.08.050
77.08.060

General terms defined.

"Game fish" defined—Classification by rule or regulation, limitation.

"Endangered species of fish and wildlife".

"Deleterious exotic species of fish and wildlife".

"Managed marine mammals".

"Wildlife agent".

77.08.010 General terms defined. As used in this title or in any rule or regulation of the state game commission:

"Director" means the director of game.

"Department" means the department of game.

"Commission" means the state game commission.

"Person" means and includes any individual, any corporation, or any group of two or more individuals acting together to forward a common purpose whether acting in an individual, representative, or official capacity.

"Hunt" and its derivatives, "hunting," "hunted," etc., and "trap" and its derivatives, "trapping," "trapped," etc., means any effort to kill, injure, capture, or disturb a wild animal or wild bird.

"Fish" and its derivatives, "fishing," "fished," etc., means any effort made to kill, injure, disturb, capture, or catch a game fish.

"Closed season" means all of the time during the entire year excepting the "open season" as specified by rule and regulation of the commission.

"Open season" means the time specified by rule and regulation of the commission when it shall be lawful to hunt, trap, or fish for any game animals, fur-bearing animals, game birds, or game fish. Each period of time specified as an open season shall include the first and last days thereof.

"Closed area" means any place in the state described or designated by rule and regulation of the commission wherein it shall be unlawful to hunt or trap for game animals, fur-bearing animals, or game birds.

"Closed waters" means any lake, river, stream, body of water, or any part thereof within this state described or designated by rule and regulation of the commission wherein it shall be unlawful to fish for any game fish.

"Game reserve" means any "closed area" designated by the commission as a game reserve.

"Game fish reserve" means any "closed waters" designated by the commission as a game fish reserve.

"Bag limit" means the maximum number of game animals, game birds, fur-bearing animals, or game fish which may be taken, caught, killed, or possessed by any licensee, specified and fixed by rule and regulation of the commission for any particular period of time, or so specified and fixed as to size, sex, or species. [1955 c 36

§ 77.08.010. Prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

77.08.020 "Game fish" defined—Classification by rule or regulation, limitation. As used in this title or in any rule or regulation of the commission, "game fish" include any *Salmo irideus* commonly known as rainbow trout, *Salmo clarkii* commonly known as cutthroat trout (coastal), *Salmo gairdnerii* commonly known as steelhead, *Salvelinus fontinalis* commonly known as Eastern brook trout, *Oncorhynchus nerka* (kennerly) commonly known as silver trout, *Cristivomer namaycush* commonly known as mackinaw trout, *Micropterus salmoides* commonly known as large-mouth black bass, *Micropterus dolomieu* commonly known as small-mouth black bass, *Prosopium williamsoni* commonly known as white fish, *Perca flavescens* commonly known as yellow perch, *Pomixis annularis* commonly known as white crappie, *Pomixis sparoides* commonly known as black crappie, *Helioperca incisor* commonly known as bluegill sunfish, *Eupomotis gibbosus* commonly known as Pumpkinseed sunfish, *Ameiurus nebulosus* commonly known as catfish, *Thymallus montanus* commonly known as Montana grayling, *Salvelinus malma spectabilis* commonly known as Dolly Varden trout or Western char or bull trout, *Salmo clarkii lewisi* commonly known as cutthroat trout, or Montana black-spotted trout, *Salmo gairdnerii kamloops* commonly known as Kamloops trout or rainbow trout, *Salmo trutta* commonly known as brown trout, *Ambloplites rupestris* commonly known as Northern rock bass, *Ameiurus melas* commonly known as black catfish, Golden trout and any such other species of fish commonly found in fresh water as may be classified as game fish by rule or regulation of the commission: *Provided*, That the commission shall not classify as game fish any species of fish classified as a food fish by the director of fisheries. [1969 ex.s. c 19 § 1; 1955 c 36 § 77.08.020. Prior: 1947 c 275 § 10; Rem. Supp. 1947 § 5992-20.]

Director of fisheries: Chapter 75.08 RCW.

Food fish, shellfish: RCW 75.04.040.

77.08.030 "Endangered species of fish and wildlife". As used in this title or in any rule or regulation of the commission "endangered species of fish and wildlife" shall mean those species of fish and wildlife designated by rule or regulation of the commission as seriously threatened with extinction. Such rules or regulations of the commission shall include, but not be limited to, endangered species as so designated by the secretary of the interior on August 9, 1971: *Provided*, That the commission may amend such rules and regulations to exclude any species of fish and wildlife from designation as an endangered species if the commission determines that the species is no longer endangered. [1971 ex.s. c 166 § 1.]

77.08.040 "Deleterious exotic species of fish and wildlife". As used in this title or in any rule or regulation of the commission "deleterious exotic species of fish and wildlife" shall mean these species of fish and wildlife

designated by rule or regulation of the commission as dangerous to the environment or native species of fish and wildlife of the state of Washington. [1971 ex.s. c 166 § 2.]

77.08.050 "Managed marine mammals". As used in this title or any rule or regulation of the commission "managed marine mammals" shall include all mammals of the order cetacea and the suborder pinnipedia including but not limited to whales, porpoises, dolphins, seals and sea lions. [1971 ex.s. c 166 § 5.]

77.08.060 "Wildlife agent". As used in Title 77 RCW or in any rule or regulation of the commission, "wildlife agent" means any person heretofore referred to in the provisions of Title 77 RCW as a "game protector". [1971 ex.s. c 121 § 1.]

Chapter 77.12

POWERS AND DUTIES OF COMMISSION

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- 77.12.510 Managed marine mammals—Rules and regulations as to capture, sale, confinement, etc.—Permits.
- 77.12.520 Publication of informational materials—Costs.

77.12.010 Policy of protection enunciated. The wild animals and wild birds in the state of Washington and the game fish in the waters thereof are the property of the state. The game animals, fur-bearing animals, game birds, nongame birds, harmless or song birds, and game fish shall be preserved, protected, and perpetuated. Such game animals, fur-bearing animals, game birds, nongame birds, harmless or song birds, and game fish shall only be taken at such times or places, by such means, in such manner, or in such quantities as will in the judgment of the commission maximize public recreational opportunities but not impair the supply thereof: *Provided, however,* That nothing contained herein shall be construed to infringe on the right of a private property owner to control his private property. [1977 c 74 § 1; 1955 c 36 § 77.12.010. Prior: 1947 c 275 § 11; Rem. Supp. 1947 § 5992–21.]

77.12.020 Wildlife to be classified. The commission shall, from time to time, investigate and determine the habits and distribution of the various species of wild animals, wild birds, and game fish native to or capable of being adapted to the climatic conditions of the state, and classify the wild animals as game animals, predatory animals, fur-bearing animals, and protected wildlife, and classify the wild birds as game birds including migratory game birds and upland game birds, predatory birds, nongame birds, and harmless or song birds. [1969 ex.s. c 18 § 1; 1955 c 36 § 77.12.020. Prior: 1947 c 275 § 12; Rem. Supp. 1947 § 5992–22.]

77.12.030 Propagation and protection, commission to regulate. The commission may regulate the propagation and preservation of all game animals, fur-bearing animals, protected wildlife, game birds, nongame birds, harmless or song birds, and game fish, and the collection of game fish spawn, and the distribution thereof, and the distribution of fry and adult game fish in any of the rivers, lakes, and streams of the state, and may import such spawn, fry, and adult fish as may be deemed advisable, and, when so propagated, taken or imported, distribute the same to the various counties as necessities and adaptabilities may require.

The commission may authorize or prohibit the importation of wild animals, wild birds and game fish, and regulate and license the sale and transportation thereof within the state. [1969 ex.s. c 18 § 2; 1955 c 36 § 77.12.030. Prior: 1947 c 275 § 13; Rem. Supp. 1947 § 5992–23.]

77.12.040 Rules and regulations. The commission shall, from time to time, adopt, promulgate, amend, or repeal, and enforce, reasonable rules and regulations governing the time, place and manner, or prohibiting the taking of the various classes of game animals, fur-bearing animals, protected wildlife, and predatory animals, game birds, predatory birds, nongame birds, and harmless or song birds, and game fish in the respective areas and throughout the state and the quantities, species, sex and size of such animals, birds and fish that may be taken.

The commission may establish within the state by rule and regulation game reserves and closed areas wherein all hunting and trapping for game animals, game birds, protected wildlife and fur-bearing animals, may be prohibited and game fish reserves and closed waters wherein all fishing for game fish may be prohibited. [1969 ex.s. c 18 § 3; 1955 c 36 § 77.12.040. Prior: 1947 c 275 § 14; Rem. Supp. 1947 § 5992–24.]

77.12.050 Rules and regulations—How promulgated—Certified copy as evidence. All rules and regulations adopted by the commission and all amendments to, modifications or repeals of existing rules and regulations, shall be adopted by a vote of two-thirds of the entire membership of the commission at any meeting by resolution, entered and recorded in the minutes of the commission, and shall be published at the state capital.

The commission, in its discretion, may direct the publication of any such rules and regulations in other newspapers of the state by providing therefor in such resolution.

Any copy of such resolution, certified as a true copy by any member of the commission or the director, or the assistant director, or by any person authorized in writing by the director to make such certification, shall be admissible in any court as prima facie evidence of the adoption, promulgation, and validity of any such rule or regulation. [1955 c 36 § 77.12.050. Prior: 1947 c 275 § 15; Rem. Supp. 1947 § 5992–25.]

77.12.060 Service of process by game officials—Aid by law enforcement officials and citizens. The director, all game protectors, and all deputy game protectors may serve and execute all warrants and process issued by the courts in enforcing the provisions of law and all rules and regulations of the commission pertaining to wild animals, wild birds, and game fish or pertaining in any manner to the management, operation, maintenance or use of all real property used, owned, leased or controlled by the department or the conduct of persons in or on the same.

For the purpose of enforcing any such law or rule or regulation, they may call to their aid any sheriff, deputy sheriff, constable, police officer, or citizen and any such person shall render such aid. [1961 c 68 § 1; 1955 c 36 § 77.12.060. Prior: 1947 c 275 § 16; Rem. Supp. 1947 § 5992–26.]

77.12.070 Duties of game protectors and other police officers. Every game protector, deputy game protector, sheriff, constable, marshal, and police officer within his respective jurisdiction, shall enforce all laws and rules and regulations adopted by the commission for the protection of game animals, fur-bearing animals, game birds, nongame birds, harmless or song birds, and game fish, and further shall enforce all laws or rules and regulations adopted by the commission pertaining in any manner to the management, operation, maintenance or use of all real property used, owned, leased or controlled by the department or the conduct of persons in or on the same, and may issue citations to persons failing to comply with any such law or rules and regulations, or with *RCW 9.66.060 as now exist or are later amended. The police officers specified, and United States game wardens, any forest officer, appointed by the United States government, state forest wardens and rangers, and each of them, by virtue of their election or appointment, are constituted ex officio deputy game protectors within their respective jurisdictions. [1971 ex.s. c 173 § 1; 1961 c 68 § 2; 1955 c 36 § 77.12.070. Prior: 1947 c 275 § 17; Rem. Supp. 1947 § 5992–27.]

*Reviser's note: "RCW 9.66.060" was repealed by 1971 ex.s. c 307 § 24; see RCW 70.93.060.

77.12.080 Arrest without warrant. Any game protector, deputy game protector, or ex officio game protector may, without warrant, arrest any person found violating any law enacted, or any rule or regulation adopted and

promulgated by the commission, pertaining to wild animals, wild birds and game fish or pertaining in any manner to the management, operation, maintenance or use of all real property used, owned, leased or controlled by the department or the conduct of persons in or on the same, or *RCW 9.66.060 as now exist or are later amended. [1971 ex.s. c 173 § 2; 1961 c 68 § 3; 1955 c 36 § 77.12.080. Prior: 1947 c 275 § 18; Rem. Supp. 1947 § 5992–28.]

*Reviser's note: "RCW 9.66.060" was repealed by 1971 ex.s. c 307 § 24; see RCW 70.93.060.

77.12.090 Search of vehicles, game bags, receptacles, etc. Any member of the commission, the director, and any game protector, deputy game protector, or ex officio game protector may search without warrant, any conveyance, vehicle, game bag, game basket, game coat or other receptacle for game animals, game birds, or game fish, or any package, box, tent, camp, or other similar place which he has reason to believe contains evidence of violations of law or rules and regulations of the commission. [1955 c 36 § 77.12.090. Prior: 1947 c 275 § 19; Rem. Supp. 1947 § 5992–29.]

77.12.100 Seizure of contraband game and devices—Forfeiture. Any member of the commission, the director, and all game protectors, deputy game protectors, and ex officio game protectors, may seize without warrant all wild birds, wild animals, game fish, or parts thereof, taken, killed, transported, or possessed contrary to law, or rule or regulation of the commission, and any dog, gun, trap, net, seine, decoy, bait, boat, light, fishing tackle, or other device unlawfully used in hunting, fishing, or trapping, or held with intent to use unlawfully in hunting, fishing, or trapping. The justice of the peace in either of the two nearest incorporated cities or towns nearest the place the seizure is made shall have power and jurisdiction in any prosecution for unlawfully hunting, fishing, or trapping, in addition to any other penalty provided by law, to forfeit for the use of the commission, any wild animal, wild bird, or game fish, and any article or dog so seized and proved to have been unlawfully used or held with intent unlawfully to use. In case it appears upon the sworn complaint of the officer making the seizure that any articles seized were not in the possession of any person, and that the owner thereof is unknown, the court shall have power and jurisdiction to forfeit such articles so seized upon a hearing duly had after service of summons, describing the articles seized, upon the unknown owner by publication in the manner provided by law for the service of summons by publication in civil actions. All dogs, guns, traps, nets, seines, decoys, baits, boats, lights, fishing tackle, or other devices seized under the provisions of this title unless forfeited by order of the court, shall be returned, after the completion of the case, and the fines, if any, have been paid. [1955 c 36 § 77.12.100. Prior: 1947 c 275 § 20; Rem. Supp. 1947 § 5992–30.]

77.12.110 Disposition of forfeited articles. In the event of the seizure and forfeiture of any articles as provided in RCW 77.12.100, the commission may sell all or

any of such articles at public auction. The time, place and manner of holding such sale shall be within the discretion of the commission: *Provided*, That notice of the time and place of any such sale shall be published once a week for at least two consecutive weeks in advance of such sale, in at least one newspaper of general circulation in the county wherein the sale is to be held. The proceeds from all such sales shall be deposited with the state treasurer to the credit of the state game fund. [1955 c 36 § 77.12.110. Prior: 1947 c 275 § 21; Rem. Supp. 1947 § 5992-31.]

77.12.120 Seizure of contraband game—Search warrant. Any court having jurisdiction shall, upon complaint showing probable cause for believing that any wild bird, wild animal, game fish, or any part thereof, caught, taken, killed, or had in possession, or under control by any person, or shipped or transported contrary to law or rule or regulation of the commission, is concealed or illegally kept in any game bag, game basket, game coat, or in any other receptacle for game animals, game birds or game fish, or in any package, box, cold-storage locker or plant, warehouse, market, tavern, boarding house, restaurant, club, hotel, eating house, fur store, tannery, tent, camp, building, vehicle, or other place, issue a search warrant and cause a search to be made in any such place for any wild birds, wild animals, game fish, or any part thereof, and may cause any buildings, enclosure, or vehicle to be entered and any apartment, chest, box, locker, crate, basket, package, or other receptacle, to be broken open, and the contents thereof examined. [1955 c 36 § 77.12.120. Prior: 1947 c 275 § 22; Rem. Supp. 1947 § 5992-32.]

77.12.130 Certain devices declared public nuisances. All nets, seines, lanterns, snares, devices, contrivances, and materials while in use, or had and maintained, for the purpose of catching, taking, or killing, or attracting, or decoying any wild bird, wild animal, or game fish, contrary to law or rule or regulation of the commission, are public nuisances. The director and all game protectors, deputy game protectors, ex officio game protectors, and all police officers, shall without warrant or process, take, seize, abate, or destroy them while being used, had, or maintained for such purpose. [1955 c 36 § 77.12.130. Prior: 1947 c 275 § 23; Rem. Supp. 1947 § 5992-33.]

77.12.140 Acquisition of specimens for propagation. The commission and the director may secure by purchase, gift, or exchange with the proper authorities of other countries, states, and territories, wild birds, their nests and eggs, wild animals, and game fish, fry or spawn, for stocking or propagating purposes and may sell or otherwise dispose of birds, animals, and fish, fry or spawn, so obtained. No game protector or deputy game protector shall sell or give away any game bird, game animal, or game fish, eggs, fry or spawn, to any person without the written consent of the director. [1955 c 36 § 77.12.140. Prior: 1947 c 275 § 24; Rem. Supp. 1947 § 5992-34.]

77.12.150 Seasons—Opening and closing—Bag limits. The director, with the approval of the commission, may entirely close, or shorten any season for game animals, fur-bearing animals, game birds, or game fish within the respective game areas, and after a season has been closed or shortened, reopen it, and also fix daily, weekly, or season bag limits on game animals, fur-bearing animals, game birds, or game fish within any game area.

Whenever the director finds that game animals have increased in numbers in any locality of the state to such an extent that they are damaging public or private property, or over-grazing their range, the commission may establish a special hunting season, designate the area and the number and sex of the animals that may be killed by a licensed hunter therein, promulgate necessary rules and regulations, and determine by lot the number of hunters that may hunt within such area and the conditions and requirements incident thereto. The drawing shall take place at a time and place previously determined by the director. Notice of the establishing of such special hunting season and of the drawing shall be given in the manner provided for the publishing of orders opening or closing seasons.

The exercise of power herein granted to close or reopen regular or special seasons, or fix bag limits, shall be by a written order signed by the director promulgated in accordance with chapter 34.04 RCW. [1977 ex.s. c 58 § 1; 1975 1st ex.s. c 102 § 1; 1955 c 36 § 77.12.150. Prior: 1949 c 205 § 2; 1947 c 275 § 25; Rem. Supp. 1949 § 5992-35.]

77.12.160 Notice of seasons and bag limits—Publication. The director shall publish the order closing, shortening, or reopening any season, or fixing any bag limit, in a newspaper of general circulation in each county affected. [1975 1st ex.s. c 102 § 2; 1955 c 36 § 77.12.160. Prior: 1947 c 275 § 26; Rem. Supp. 1947 § 5992-36.]

77.12.170 State game fund—Composition—Disposition of fees, fines, forfeitures, penalties. There is established in the state treasury a fund to be known as the state game fund which shall consist of all moneys received from fees for the sale of licenses and permits provided in this title, from fees for the recovery of reasonable costs of publication of informational materials by the department, from the personalized vehicle license plate fees provided in chapter 46.16 RCW, and from fines, forfeitures, and costs collected for violations of this title, or any other statute for the protection of wild animals and birds and game fish, or any rule or regulation of the commission relating thereto: *Provided*, That fifty percent of all fines and bail forfeitures shall not become part of the state game fund and shall be retained by the county in which collected: *Provided further*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

All state and county officers receiving any moneys in payment of fees for licenses under this title, or in payment of fees for reasonable costs of publication of informational materials by the department, or from fees for the personalized vehicle license plates provided in chapter 46.16 RCW, or in payment of fines, penalties, or costs imposed for violations of this title, or any other statute for the protection of wild animals and birds and game fish, or any rule or regulation of the commission; from rentals or concessions, and from the sale of real or personal property held for game department purposes, shall pay them into the state treasury to be placed to the credit of the state game fund: *Provided*, That county officers shall remit only fifty percent of all fines and bail forfeitures: *Provided further*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1979 c 56 § 1; 1973 1st ex.s. c 200 § 12 (Referendum Bill No. 33); 1969 ex.s. c 199 § 33; 1955 c 36 § 77.12.170. Prior: 1947 c 275 § 27; Rem. Supp. 1947 § 5992-37.]

77.12.173 Penalty assessments upon fines and forfeitures—Deposit in state game fund. On and after June 12, 1975, there shall be levied a penalty assessment in an amount of five dollars for every twenty dollars or fraction thereof, imposed and collected by any court as a fine or forfeiture of bail for any violation of a provision of Title 77 RCW or of any rule, regulation, or order adopted pursuant thereto. Penalties so assessed shall be used by the department of game for the purposes set forth in RCW 77.12.010. Where multiple violations are involved, the penalty assessment shall be based upon the total fine or bail forfeited for all included offenses. When a fine is suspended, in whole or in part, the penalty assessment shall be reduced in proportion to the suspension, except that the penalty assessment shall never be reduced to less than a total of five dollars.

If bail is forfeited, the court shall collect the appropriate amount of the penalty assessment from the person forfeiting such bail and the total amount of such assessment shall be remitted within fifteen days after the end of each quarter to the department of game and deposited in the state game fund.

After a determination by the court of the amount of fine and assessment, the court shall collect and remit within fifteen days after the end of each quarter to the department of game the total amount of such assessment for deposit in the state game fund. [1975 c 57 § 1.]

77.12.175 Personalized license plates—Use of fees for support and aid of wildlife resources—Purpose of act. It is declared to be the public policy of the state of Washington to direct financial resources of this state toward the support and aid of the wildlife resources existing within the state of Washington in order that the general welfare of these inhabitants of the state be served. For the purposes of this chapter, wildlife resources are understood to be those species of wildlife other than that managed by the department of fisheries

under their existing jurisdiction as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries. The legislature further finds that the preservation, protection, perpetuation, and enhancement of such wildlife resources of the state is of major concern to it, and that aid for a satisfactory environment and ecological balance in this state for such wildlife resources serves a public interest, purpose, and desire.

It is further declared that such preservation, protection, perpetuation, and enhancement can be fostered through financial support derived on a voluntary basis from those citizens of the state of Washington who wish to assist in such objectives; that a desirable manner of accomplishing this is through offering personalized license plates for certain vehicles and campers the fees for which are to be directed to the state treasury to the credit of the state game fund for the furtherance of the programs, policies, and activities of the state game department in preservation, protection, perpetuation, and enhancement of the wildlife resources that abound within the geographical limits of the state of Washington.

In particular, the legislature recognizes the benefit of this program to be specifically directed toward those species of wildlife including but not limited to song birds, protected wildlife, rare and endangered wildlife, aquatic life, and specialized-habitat types, both terrestrial and aquatic, as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries that exist within the limits of the state of Washington. [1975 c 59 § 7; 1973 1st ex.s. c 200 § 1.]

77.12.190 Diversion of license fees prohibited. No funds accruing to the state from hunting and fishing license fees shall be diverted to any other purpose than the protection, propagation, and restoration of wildlife and game and the expenses of administration of the department. [1955 c 36 § 77.12.190. Prior: 1947 c 275 § 28; Rem. Supp. 1947 § 5992-38.]

77.12.200 Acquisition of property for hatcheries, game farms, etc. The director, with the approval of the commission, may acquire by gift, purchase, lease or condemnation, lands, buildings, waters, or other necessary property for hatchery sites, eyeing stations, rearing ponds, brood ponds, trap sites, game animal, fur-bearing animal, game bird, nongame bird and game fish farms, habitats and sanctuaries and public hunting and fishing areas together with rights of way for access to any and all such lands, buildings, or waters so acquired, in the manner provided by law for acquiring property for public use: *Provided*, That excepting for purposes of clearing title and acquiring access rights of way the power of condemnation may be exercised by the director hereunder only when an appropriation has been specifically made by the legislature for that purpose. [1965 ex.s. c 97 § 1; 1955 c 36 § 77.12.200. Prior: 1953 c 65 § 1; 1947 c 275 § 29; Rem. Supp. 1947 § 5992-39.]

77.12.201 Counties may elect to relinquish fines and receive payments in lieu of taxes. The board of county commissioners of each county may elect, upon written notice given to the director prior to January 1st of any year, to obtain for the following year an amount in lieu of real estate taxes on game lands equal to that which would be paid on similar parcels of real estate situated in the county. Upon such election the total of all fines and bail forfeitures received by the county during the following year under RCW 77.12.170 shall be transmitted to the director and the distribution procedure established by chapter 3.62 RCW shall not apply to the fines and forfeitures. The election shall continue until the game department is notified differently prior to January 1st of any year. [1977 ex.s. c 59 § 1; 1965 ex.s. c 97 § 2.]

77.12.203 In lieu payments authorized—Procedure—Game lands defined. Notwithstanding the provisions of RCW 84.36.010 or any other statute to the contrary, the director is hereby authorized and directed to pay on all game lands in each county of the state, if requested pursuant to an election made under RCW 77.12.201, an amount, in lieu of real property taxes, equal to that which would be paid on similar parcels of real property subject to real property taxes: *Provided*, That no in lieu of tax payment shall be assessed or paid on any building structures or constructed facilities owned by the state for the department and situated on game lands nor shall any tax payment be paid on any game farm, fish hatchery or tidelands, nor on any public fishing area of less than one hundred acres in size.

Game lands, as used in this section, shall mean only such tracts one hundred acres or larger in size owned in fee by the state for the department and used for the purpose of wildlife habitat and public fishing and hunting.

The director shall have any and all rights of appeal and adjustment of any taxes or assessments as would any other owner of real property subject to taxation and assessment.

Upon an election being made by the board of county commissioners to receive an amount in lieu of real property taxes, the county assessors shall enter the property upon the real property tax rolls and the amount due in lieu of taxes shall be paid by the department upon statements being sent by the county treasurers in the same manner as statements for taxes on the general real property of the counties. [1965 ex.s. c 97 § 3.]

77.12.205 Disposition of in lieu payments. County commissioners of the respective counties to which the payments in lieu of real property taxes are made may expend the moneys for the benefit of any county purpose they desire. [1965 ex.s. c 97 § 4.]

77.12.207 Payments to counties of costs of confining violators. The director is hereby authorized and directed to pay to each county the actual costs of confinement of any person placed in the custody of the county by any court of competent jurisdiction for violation of this title, or any other statute for the protection of wild animals

and birds and game fish, or any rule or regulation of the commission. [1965 ex.s. c 97 § 5.]

77.12.210 Control of hatcheries, game farms, etc.—Disposal of property—Procedure. The commission, acting by and through the director, shall have full control of the maintenance and management of all hatcheries, eyeing stations, rearing ponds, brood ponds, trap sites, game animal, fur-bearing animal, game bird, nongame bird, and game fish farms, habitats and sanctuaries, public hunting and fishing areas, and of the access to any and all of the foregoing and of any and all other real or personal property in any wise owned, leased, or held by the state for game department purposes, and shall have full control of the construction of all buildings and structures of any kind and all improvements of every nature in or upon all such property. The commission may make rules and regulations in relation to the operation, maintenance and use of any such property and the conduct of all persons who are in or on the same.

The commission, acting by and through the director, may, from time to time, sell timber, gravel, sand and other materials or products from real property belonging to the state and held for game department purposes and may sell or lease any such real or like personal property or grant concessions in or grant rights of way for roads or utilities of any type in or upon the same when in its judgment such action is advantageous to the state. If the commission shall determine to sell any real property, the director shall file with the department of natural resources a certificate containing the following: The legal description of the real property to be sold; a statement that the property is not then necessary for the purposes for which it was acquired; and the minimum sale price to be received by the department of natural resources therefor. Upon the filing of such certificate, the department of natural resources shall proceed to appraise and sell such real property in accordance with the statutes relative to sale of public lands of this state: *Provided*, That such lands shall not be sold for less than the amount fixed in the certificate as aforesaid.

All proceeds from such sales shall be transmitted by the department of natural resources to the state treasurer and by him credited to the state game fund. [1969 ex.s. c 73 § 1; 1955 c 36 § 77.12.210. Prior: 1947 c 275 § 30; Rem. Supp. 1947 § 5992-40.]

77.12.220 Acquisition of additional land by exchange. Whenever it may become necessary in order to obtain additional lands for hatchery sites, eyeing stations, rearing ponds, brood traps, trap sites, game animal, fur-bearing animal, game bird, nongame bird, and game fish farms, habitats and sanctuaries and public hunting or fishing areas or for rights-of-way for access to any and all such lands, to transfer or convey lands held by the state to the United States, its agencies or instrumentalities, to any municipal subdivision of this state, or to any public utility company, or to any person, and in the judgment of the commission and the attorney general such transfer and conveyance is consistent with public interest, the commission, acting by and through

the director, may enter into agreements accordingly. Whenever the commission shall make any such agreement for any such transfer or conveyance and together with the attorney general certifies to the governor that such agreement has been made setting forth in such certification a description of the land or premises involved, the governor may execute and the secretary of state shall attest and deliver unto the United States or its agencies or instrumentalities, unto any municipal subdivision of the state, or unto any public utility company, or unto any person a deed of conveyance, easement or other instrument necessary to fulfill the terms of the aforesaid agreement. [1955 c 36 § 77.12.220. Prior: 1949 c 205 § 3; 1947 c 275 § 31; Rem. Supp. 1949 § 5992-41.]

77.12.230 Local assessments against game property. The director is hereby authorized to cause to be paid by state voucher currently when due any lawful local improvement district assessments made against lands held by the state for game purposes. Such payments may be made out of any money appropriated from the state game fund to the department for capital outlay, maintenance or operations during the biennium for which such appropriation is made. [1955 c 36 § 77.12.230. Prior: 1947 c 275 § 32; Rem. Supp. 1947 § 5992-42.]

77.12.240 Director may kill game in certain circumstances. The director may remove or kill any wild animal, game fish or wild bird that in his judgment is destroying or injuring property, or when, in the judgment of the commission, such killing or removal is necessary for scientific research, or for proper game or game fish management.

In the event of any such killing of any wild animals, wild birds or game fish, the director shall, whenever in his opinion it is feasible or practical, distribute the meat thereof to state or charitable institutions. [1955 c 36 § 77.12.240. Prior: 1947 c 275 § 33; Rem. Supp. 1947 § 5992-43.]

77.12.250 Entry upon premises in course of duty permitted. The director and his duly authorized and acting assistants, game protectors, deputy game protectors, agents, appointees or employees may, in the course of their duties, enter upon any land or waters in this state and remain thereon while performing such duties and such action by such persons shall not constitute trespass. [1955 c 36 § 77.12.250. Prior: 1947 c 275 § 34; Rem. Supp. 1947 § 5992-44.]

77.12.260 Cooperative agreements for prevention of damage to private property. The commission, acting by and through the director, may enter into written agreements with persons in all matters relating to prevention of damage of private property by wild animals and wild birds. Any such agreements may include but need not be limited to provisions concerning herding, feeding, fencing, and other similar actions, to prevent such damage. Under any such agreement the department may participate in the furnishing of money, material, or labor to such extent as may be deemed necessary or advisable by

the commission. [1955 c 36 § 77.12.260. Prior: 1949 c 238 § 1; 1947 c 275 § 35; Rem. Supp. 1949 § 5992-45.]

77.12.270 Damages caused by game—Payment authorized. In accordance with the terms and provisions of RCW 77.12.270 to 77.12.300, inclusive, and pursuant to such rules and regulations as may be promulgated by the commission hereunder, the commission, by and through the director, is hereby authorized to compromise, adjust, settle, and pay claims for damages caused by deer or elk out of moneys from time to time appropriated to the department for such purposes. [1963 c 177 § 8; 1955 c 36 § 77.12.270. Prior: 1949 c 238 § 3; Rem. Supp. 1949 § 5992-45a.]

77.12.280 Damages caused by game—Maximum payment—Settlement final—Arbitration procedure, advisory awards. No payment of any such claim shall be made in excess of one thousand dollars, and in the event any claim is not adjusted, compromised, or settled and paid by the commission for a sum up to such amount, and within one year from the filing of such claim the same may be filed with the director of financial management. Contents of all such claims shall conform to the tort claim filing requirements found in RCW 4.92-.100 as now or hereafter amended. The director of financial management shall recommend to the legislature whether such claims should be approved or rejected. If the legislature approves a claim the same shall be paid from appropriations specifically provided for such purpose by law. The payment of any claim by the commission shall be full and final payment upon such claim.

In the event that any valid claim for damages as provided for in RCW 77.12.270 has been refused or has not been compromised, adjusted, settled and paid by the commission within one hundred and twenty days of the filing of the claim for damages with the commission as provided for in RCW 77.12.290, either the claimant or the commission may serve upon the other personally or by registered mail a notice of an intention to arbitrate; said notice shall contain the name of a person, selected as one arbitrator. Within ten days of receiving such a notice to arbitrate the person upon whom such notice was served shall serve personally or by registered mail upon the other party the name of an arbitrator. The two arbitrators, within seven days of the naming of the second arbitrator shall select a third arbitrator, said arbitrator not to be an employee or commissioner of the state game department. In the event that the two arbitrators as selected by the parties to the dispute cannot agree upon a third arbitrator, either party to the dispute may petition the superior court in the county in which the claim arose, asking said court to select the third arbitrator and upon receiving such a petition the court shall appoint a third arbitrator. Any filing fee or court costs arising from the foregoing petition shall be shared equally by the claimant and the department of game.

The award of the arbitrators shall be advisory only; it shall be written and filed with the department of game at its office in Seattle, King county, Washington, not later than ninety days following the naming of the third arbitrator.

In the event that the parties arbitrate no payment shall be made by the commission until the arbitrators shall have made their advisory award. The payment of any claim by the commission shall be full and final payment of the claim.

In the event that any claim is not adjusted, compromised, settled and paid through arbitration or otherwise within one year from the filing of said claim the same may be filed with the director of financial management. Contents of all such claims shall conform to the tort claim filing requirements found in RCW 4.92.100 as now or hereafter amended. The director of financial management shall recommend to the legislature whether such claims should be approved or rejected. If the legislature approves a claim the same shall be paid from appropriations specifically provided for such purpose by law. [1979 c 151 § 176; 1977 ex.s. c 144 § 8; 1957 c 177 § 1; 1955 c 36 § 77.12.280. Prior: 1949 c 238 § 4; Rem. Supp. 1949 § 5992-45b.]

77.12.290 Damages caused by game—Notice of claim required—Damages on public lands excluded. Notice of all claims for damages caused by deer or elk shall be filed in writing with the commission in the offices of the department of game, Olympia, Thurston county, Washington, within ninety days after the claimed damage has occurred, or within ninety days following the discovery of the claimed damage. In the event the damages are unascertainable within such ninety day period, the notice shall so state. The failure to file notice of any claim or pending claim shall bar payment thereof. No payment shall be made to any claimant for damages occurring on lands leased by claimant from any public agency. [1963 c 177 § 9; 1957 c 177 § 2; 1955 c 36 § 77.12.290. Prior: 1953 c 127 § 1; 1949 c 238 § 5; Rem. Supp. 1949 § 5992-45c.]

77.12.300 Damages caused by game—Rules and regulations as to claims—Exclusion of noncooperating claimants. The commission may promulgate rules and regulations requiring affidavits and prescribing the forms thereof to be furnished in proof of all claims and providing for the time for the making of any examination, appraisal, or ascertainment of any damages. The commission may by rule and regulation provide that it may refuse to consider and pay any claims of claimants who have posted the property whereon the claimed damages have occurred, against hunting during the season immediately preceding the time when said damages occurred. [1957 c 177 § 3; 1955 c 36 § 77.12.300. Prior: 1949 c 238 § 6; Rem. Supp. 1949 § 5992-45d.]

77.12.310 Rules and regulations governing taking of predators for bounty. The commission shall, from time to time, promulgate, adopt, amend, or repeal, and enforce reasonable rules and regulations designating the times when and areas wherein hunting, trapping, taking or killing of predatory animals and birds may be carried on for the payment of bounty by the state and determining the amount of such bounties within the limitations and in accordance with the provisions set forth in this title.

[1955 c 36 § 77.12.310. Prior: 1947 c 275 § 36; Rem. Supp. 1947 § 5992-46.]

77.12.315 Dogs pursuing, harassing, attacking or killing deer and elk—Declaration of emergency—Taking dogs into custody or destroying—Immunity. During the months of December, January, February and March of each year the director of the department of game may declare an emergency to exist in any specified geographical area of the state when snow depth and climatic conditions cause a threat to the survival of deer and elk and where such deer and elk are being pursued, harassed, attacked or killed by dogs. After an emergency has been declared and is in effect it shall be lawful for any game protector or law enforcement officer operating within the specified geographical area designated by the emergency proclamation to take into custody or, if necessary, destroy any dog which is pursuing, harassing, attacking, or killing any deer or elk. Any game protector or law enforcement officer who takes into custody or destroys a dog pursuant to this section shall be immune from any civil or criminal liability arising from his actions.

The declaration of an emergency pursuant to this section shall be by written order signed by the director of the department of game and filed in the office of the director and the office of the auditor of any county or counties affected by the order.

The director shall publish the emergency order in any newspaper of general circulation in any county affected not less than three days prior to the effective date of the order. [1971 ex.s. c 183 § 1.]

77.12.320 Agreements for propagation, protection of game—Acceptance of compensation for fish and wildlife losses, gifts, grants—Deposit in special wildlife account. The commission may enter into agreements with persons, municipal subdivisions of this state, the United States, or any of its agencies or instrumentalities regarding all matters concerning propagation, protection and conservation of wild animals, wild birds and game fish and concerning hunting or fishing therefor.

The commission or the department may at any time on behalf of the state accept compensation for fish and wildlife losses or gifts or grants of personal property for use by the department: *Provided*, That all compensation received heretofore or hereafter for fish and wildlife losses shall be deposited in the special wildlife account of the state game fund established in RCW 77.12.323. Any other moneys, when received by the commission or the department, shall currently be delivered to the state treasurer for deposit in the state game fund. [1975 1st ex.s. c 207 § 1; 1974 ex.s. c 67 § 1; 1955 c 36 § 77.12.320. Prior: 1947 c 275 § 37; Rem. Supp. 1947 § 5992-47.]

77.12.323 Game special wildlife account—Created—Uses—Investments. (1) There is established in the state game fund an account to be known as the game special wildlife account. All moneys received pursuant to RCW 77.12.320 as now or hereafter amended

as compensation for fish and wildlife losses shall be deposited in the game special wildlife account of the state game fund and shall be used only for purposes in support of RCW 77.12.010, 77.12.030, and 77.12.175.

(2) The commission may advise the state treasurer and the state finance committee of any surplus in the game special wildlife account above the current needs in support of game and wildlife. The state finance committee may invest and reinvest such surplus of said account as the commission or department deems appropriate, except as otherwise prohibited by law, in an investment authorized by RCW 43.84.150, or in securities issued by the United States government as defined by RCW 43.84.080 (1) and (4), and all income received from such investments shall be deposited to the credit of the game special wildlife account in the state game fund. [1975 1st ex.s. c 207 § 2.]

77.12.325 Cooperation with Oregon for protection, propagation of aquatic products. In addition and supplemental to any other powers and duties as provided by law, the game commission of the state of Washington is hereby authorized to cooperate with the fish and game commissions of the state of Oregon in the promulgation of rules and regulations to assure an annual yield of aquatic products on the Columbia river and to prevent the taking of these products at such places or at such times as might actually endanger the brood stock of such aquatic products. [1959 c 315 § 2.]

77.12.330 Areas may be set aside for use of minors. The commission may, by rule and regulation, set aside for exclusive fishing by minors within ages to be fixed by the commission certain described waters, lakes, rivers, or streams. If any such waters, lakes, rivers, or streams are so set aside, all fishing shall be in accordance with rules and regulations of the commission which may be prescribed therefor and the commission may thereby exclude all persons excepting minors within the ages specified from fishing therein. [1955 c 36 § 77.12.330. Prior: 1947 c 275 § 38; Rem. Supp. 1947 § 5992-48.]

77.12.340 Acquisition of property for office, storage, warehouse, and garage facilities. The commission is hereby authorized and directed to acquire by gift, purchase, or condemnation, in the manner provided by law for the acquisition of property for public purposes, such land and premises, such building for the office of the department of game, and such property as may be necessary for storage, warehouse and garage facilities of said department. [1955 c 36 § 77.12.340. Prior: 1947 c 138 § 1; Rem. Supp. 1947 § 10898-35.]

77.12.350 Construction of facilities authorized. The commission is further authorized, whenever such land and premises have been acquired, to cause to be constructed thereon a building for the offices, storage, warehouse and garage facilities aforesaid. [1955 c 36 § 77.12.350. Prior: 1947 c 138 § 2; Rem. Supp. 1947 § 10898-36.]

77.12.360 Use of state land for game purposes. The department of natural resources is authorized upon receipt of written request from the department of game, such request bearing the endorsed approval of the board of county commissioners as hereafter provided if the hereafter described land was acquired by the state pursuant to the authority in RCW 76.12.030 or RCW 76.12.080, to withdraw from lease any state owned lands described or designated in such request if the board of natural resources finds that such withdrawal will be in conformity to the state outdoor recreation plan and upon the condition that the common school fund or any other fund for which the described or designated lands are held shall be paid any sum or sums which the lease of said described or designated lands would increase such fund. [1969 ex.s. c 129 § 3; 1955 c 36 § 77.12.360. Prior: 1947 c 130 § 1; Rem. Supp. 1947 § 8136-10.]

77.12.370 Approval by board of county commissioners—Hearing. Prior to the forwarding of any such request to the commissioner of public lands the commission shall present the same to the board of county commissioners of the county wherein the lands to be withdrawn are located and have endorsed thereon the approval of the said board. In the event said board, before approving or disapproving said request, shall deem it advisable it may set the time and place for and call a public hearing. No such hearing shall take place within thirty days from the time of presentation of the request to the board.

The commission shall publish a notice of all public hearings so set by the board, in a newspaper of general circulation, within the county wherein the lands sought to be withdrawn are located, at least once a week for two successive weeks in advance of any hearing. Such notice shall contain a copy of the request and the time and place for holding the hearing.

The chairman of the board of county commissioners shall be chairman of any such public hearing and the proceedings of the hearing shall be informal with all persons being given reasonable opportunity to be heard.

Within ten days after any such hearing the board of county commissioners shall endorse upon the request for withdrawal, its approval or disapproval thereof. The decision of the said board shall be final and there shall be no appeal allowed therefrom. [1955 c 36 § 77.12.370. Prior: 1947 c 130 § 2; Rem. Supp. 1947 § 8136-11.]

77.12.380 Appraisal of lands—Lease value to be vouchered. Upon receipt of any such approved request if in the judgment of the commissioner of public lands the requested withdrawal of the lands as designated or described in such request would be of benefit to the people of the state, he shall immediately cause an appraisal to be made of the lease value of such lands and before withdrawal of any such lands, he shall require that the department of game, acting through the director thereof, transmit to him a voucher drawn against the state game fund in favor of the particular fund for the benefit of which such lands are held and in such amount as shall represent the lease value, dependent upon such time as shall be shown in the request of the commission for

which such lands are to be withdrawn. [1955 c 36 § 77.12.380. Prior: 1947 c 130 § 3; Rem. Supp. 1947 § 8136-12.]

77.12.390 Warrant to be drawn in favor of fund for which lands were held. Upon receipt of any voucher, the commissioner of public lands shall immediately execute the same and cause such lands to be withdrawn from lease. The said commissioner shall thereupon forward to the state treasurer the said voucher and the state treasurer shall thereupon draw a warrant against the state game fund and in favor of the particular fund for which the withdrawn lands have been theretofore held. [1973 c 106 § 35; 1955 c 36 § 77.12.390. Prior: 1947 c 130 § 4; Rem. Supp. 1947 § 8136-13.]

77.12.400 Lease of certain state lands as game lands authorized. The department is authorized to lease any state-owned lands situated in Yakima and Kittitas counties for use as game lands at the prevailing rates of leases, and payment for such leases may be made out of any funds appropriated to the department for land acquisition and development. [1955 c 36 § 77.12.400. Prior: 1949 c 238 § 8.]

77.12.410 Grazing of cattle on such state lands—Limitation of elk population. The present lessees of such state-owned lands shall be allowed to graze without cost such number of livestock as shall be determined by the game commission, commissioner of public lands and a representative of the Washington Cattlemen's Association on the basis of the capacity of such lands for this purpose, that the population of elk will be not more than three thousand west and south of the Yakima river in Yakima and Kittitas counties. [1955 c 36 § 77.12.410. Prior: 1949 c 238 § 9.]

Grazing ranges: Chapter 79.28 RCW.

77.12.420 Improvement of conditions for growth of fish life. The director of game, with the consent and approval of the commission, is empowered to expend such sums as they deem advisable within the limits of available appropriations from the state game fund, for the purpose of improving natural conditions for the growth of fish life in the state by means of construction of fishways, installation of screens, removal of obstructions to migratory fish, eradicating undesirable types of fish by means of poisoning, and such other methods as they shall deem advisable and practical, and is further empowered to enter into cooperative agreements with state, county and federal municipal agencies, and with private individuals for the purpose of carrying on the work of this type. [1955 c 36 § 77.12.420. Prior: 1947 c 127 § 1; Rem. Supp. 1947 § 5944-1.]

77.12.430 Wildlife restoration—Federal act accepted. The state hereby assents to the purposes and provisions of the act of congress entitled: "An Act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," approved September 2, 1937 (Public No. 415, 75th congress), and the department shall perform such acts as

may be necessary to establish and conduct cooperative wildlife restoration projects, as defined in said act of congress, in compliance therewith and with rules and regulations promulgated by the Secretary of Agriculture thereunder. [1955 c 36 § 77.12.430. Prior: 1939 c 140 § 1; RRS § 5855-12.]

77.12.440 Fish restoration and management projects—Federal act accepted. The state of Washington hereby assents to the purposes and provisions of that certain act of congress entitled: "An Act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," approved August 9, 1950 (Public, No. 681, 81st congress), and the state department of game is hereby authorized, empowered, and directed to perform such acts as may be necessary to establish, conduct, and maintain fish restoration and management projects, as defined in said act of congress in compliance with said act and with rules and regulations promulgated by the Secretary of the Interior thereunder. [1955 c 36 § 77.12.440. Prior: 1951 c 124 § 1.]

77.12.450 Snake river forming boundary with Idaho—Cooperation with Idaho fish and game commission for promulgation and enforcement of rules and regulations. In addition and supplemental to any other powers and duties as provided by law, the commission is hereby authorized to cooperate with the Idaho fish and game commission in the promulgation and enforcement of rules and regulations regarding licenses, possession limits and other regulations affecting game animals, game birds and game fish on that portion of the Snake River that forms the boundary between the states of Washington and Idaho. [1967 c 62 § 1.]

77.12.460 Snake river forming boundary with Idaho—Unlawful acts in violation of Idaho or Washington laws or regulations. The fishing for or taking of any fish by any device whatsoever, or the placing, maintaining or using of any net, seine, trap or other fishing device of any character, in or on the waters of the Snake River, where the same forms the boundary between the state of Washington and the state of Idaho, at any time or in any manner prohibited by the laws or lawfully established rules or regulations of either the state of Washington or the state of Idaho, or the department of fisheries or the department of game thereof, is hereby prohibited and made unlawful. [1967 c 62 § 2.]

77.12.470 Snake river forming boundary with Idaho—Concurrent jurisdiction of Idaho and Washington courts and administrative officers. For the purpose of enforcing the provisions of RCW 77.12.450 through 77.12.490, the courts of this state sitting in the various counties contiguous to said waters, and officers of this state empowered to enforce laws pertaining to game fish, game birds and game animals are hereby given and shall have jurisdiction over the entire boundary waters aforesaid to the furthestmost shoreline, and

concurrent jurisdiction with the courts and administrative officers of the state of Idaho over the said boundary waters and the whole thereof is hereby expressly recognized and established. [1967 c 62 § 3.]

77.12.480 Snake river forming boundary with Idaho—Honoring fish and game licenses of either state. The right to take game fish, game birds, or game animals from the waters of the Snake River or the islands of the Snake River, where the same forms the boundary line between the state of Idaho and the state of Washington, by the holder of either an Idaho or a Washington license in accordance with the fish and game laws of the respective states is hereby recognized and made lawful and it shall be the duty of law enforcement officers to honor the license of either state and the right of the holder thereof to take game fish, game birds, or game animals from said waters and said islands in accordance with the laws of said state issuing said license. [1967 c 62 § 4.]

77.12.490 Snake river forming boundary with Idaho—Purpose—Restrictions on areas in which licensees may fish or hunt. The purpose of RCW 77.12.450 through 77.12.490 is to avoid the conflict, confusion and difficulty of an attempt to find the exact location of the state boundary in or on said waters and on said islands of the Snake River, and shall not be construed to permit the holder of a Washington license to fish or hunt on the shoreline, sloughs or tributaries on the Idaho side, nor permit the holder of an Idaho license to fish or hunt on the shoreline, sloughs or tributaries on the Washington side. [1967 c 62 § 5.]

77.12.500 Agreements with owners or lessees of real property for use for public hunting or fishing. The commission, acting by and through the director, may enter into written agreements with the owners or lessees of real property providing for the use of such real property for public hunting and fishing. The commission may establish rules and regulations governing the conduct of any persons who are in or on such real property pursuant to any such agreements for the purpose of hunting or fishing. [1967 c 45 § 1.]

77.12.510 Managed marine mammals—Rules and regulations as to capture, sale, confinement, etc.—Permits. The commission shall from time to time, adopt, promulgate, amend, or repeal, and enforce reasonable rules and regulations governing the time, place, and manner or prohibiting the capture or taking of managed marine mammals, the quantities, species, sex and size that may be captured or taken, and the transportation, sale, and confinement of managed marine mammals.

The commission may, acting through the director, issue permits for the taking or capture of managed marine mammals for scientific research, display, or propagation purposes: *Provided*, That a managed marine mammal may be taken without permit when it constitutes a threat to human life or is causing substantial damage to private property. [1971 ex.s. c 166 § 6.]

"Managed marine mammals" defined: RCW 77.08.050.

77.12.520 Publication of informational materials—Costs. The director may collect and expend moneys for the reasonable costs of publication of informational materials by the department. [1979 c 56 § 2.]

Disposition of fees for publications: RCW 77.12.170.

Chapter 77.16

PROHIBITED ACTS AND PENALTIES

Sections	
77.16.010	Game derbies—Permit—Rules and regulations.
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77.16.300	Venue of prosecution.

Alien's license to carry firearms: RCW 9.41.170.

Use of spring guns: RCW 9.41.180.

77.16.010 Game derbies—Permit—Rules and regulations. It shall be unlawful for any person to promote, conduct, hold, or sponsor any contest for the hunting of wild animals or wild birds or for fishing for game fish under any competitive arrangement without first securing a hunting or fishing contest permit from the director and paying the department one dollar therefor.

Such permits may be issued by the director under, and all such contests shall be held in accordance with, rules and regulations which the commission shall adopt

concerning the times, places and manner of holding such contests. The commission may prohibit any or all such contests whenever, in its opinion the propagation, preservation or conservation of wild animals, wild birds or game fish will be injuriously affected if such contest is permitted. [1955 c 36 § 77.16.010. Prior: 1947 c 275 § 39; Rem. Supp. 1947 § 5992-49.]

77.16.020 Taking during closed season—Exceeding bag limits—Taking within reserves. It shall be unlawful for any person to hunt, trap, or fish for any game birds, game animals, fur-bearing animals or game fish during the respective closed seasons therefor. It shall also be unlawful for any person to kill, take, or catch any species of game birds, game animals, fur-bearing animals, or game fish in excess of the number fixed as the bag limit. It shall also be unlawful for any person to hunt or trap for any game birds, game animals, or fur-bearing animals within the boundaries of any game reserve or closed area, and it shall likewise be unlawful for any person to fish for any game fish within any closed waters or within the boundaries of any game fish reserve.

Any person who hunts or traps any elk, moose, antelope, mountain goat, mountain sheep, caribou, bear, cougar, or deer in violation of this section is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both such fine and imprisonment.

Any person who hunts or traps any game bird in violation of this section is guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars and not more than one hundred dollars or by imprisonment in the county jail for not less than ten days and not more than thirty days or by both such fine and imprisonment. [1977 c 44 § 1; 1955 c 36 § 77.16.020. Prior: 1947 c 275 § 41; Rem. Supp. 1947 § 5992-50.]

Revocation of hunting license for violation of RCW 77.16.020 or 77.16.030—Appeal: RCW 77.32.290.

77.16.030 Possession during closed season or in excess of bag limits. It shall be unlawful for any person to have in his possession or under his control any game bird, nongame bird, game animal, fur-bearing animal, or game fish, or part thereof, during the closed season or in excess of the bag limit.

Any person who has in his possession or under his control any elk, moose, antelope, mountain goat, mountain sheep, caribou, bear, cougar, deer, or part thereof in violation of the foregoing portion of this section is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both such fine and imprisonment.

Any person who has in his possession or under his control any game bird or part thereof in violation of the foregoing portion of this section is guilty of a misdemeanor and shall be punished by a fine of not less than

twenty-five dollars and not more than one hundred dollars or by imprisonment in the county jail for not less than ten days and not more than thirty days or by both such fine and imprisonment.

Provided, That any person who has lawfully acquired possession of any game bird, game animal, or game fish, or part thereof, and who desires to retain it for human consumption or ornamental purposes, or desires to sell the skin, hide, horns, head, or plumage thereof, after the close of the season may do so in accordance with the rules and regulations of the commission.

Provided, further, That the owner of any game bird, nongame bird, game animal, fur-bearing animal, or game fish, who has lawfully propagated it or purchased from one who has so propagated it, may possess, ship, sell or otherwise dispose of such bird, animal, or fish, when properly tagged or sealed. [1977 c 44 § 2; 1955 c 36 § 77.16.030. Prior: 1947 c 275 § 42; Rem. Supp. 1947 § 5992-51.]

Revocation of hunting license for violation of RCW 77.16.020 or 77.16.030—Appeal: RCW 77.32.290.

77.16.040 Trafficking in game or endangered species of fish or wildlife prohibited—Exception—Common and contract carriers. Except as authorized by permit or license lawfully issued by the director, or by rule or regulation of the commission, it shall be unlawful for any person to have in his possession for sale or with intent to sell, or to expose or offer for sale or to sell or to barter for, or to exchange, or to buy, or to have in his possession with intent to ship, or to ship, any game animal, game bird, game fish, or endangered species of fish or wildlife or any part thereof or any article made in whole or part from the skin, hide, or other parts of any endangered species of fish or wildlife. It shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment any such game animal, game bird, or fish, or endangered species of fish or wildlife or any part thereof or any article made in whole or part from the skin, hide, or other parts of any endangered species of fish or wildlife: *Provided,* That nothing contained in this section shall prohibit any person from buying, selling, or shipping any lawfully tagged or sealed game animal, game bird, or game fish purchased from a licensed game farmer.

Any person violating this section shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both such fine and imprisonment. [1971 ex.s. c 166 § 4; 1961 c 75 § 1; 1955 c 36 § 77.16.040. Prior: 1947 c 275 § 43; Rem. Supp. 1947 § 5992-52.]

Endangered species of fish or wildlife defined: RCW 77.08.030.

77.16.050 Artificial lights prohibited in big game hunting. It shall be unlawful for any person to hunt any elk, moose, antelope, mountain goat, mountain sheep, caribou or deer with a jack light or other artificial light of any kind and to be found with any torch, lantern, electric, acetylene, gas or other artificial light and with

any rifle, shotgun, or other firearm, after sunset, in any wooded section or other place where any of the above mentioned animals may reasonably be expected, shall be prima facie evidence of unlawful hunting. Any person violating the provisions of this section is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or imprisonment of not less than thirty days and not more than one year in the county jail or by both such fine and imprisonment. [1955 c 36 § 77.16-.050. Prior: 1947 c 275 § 44; Rem. Supp. 1947 § 5992-53.]

77.16.060 Explosives, medicated bait, etc., prohibited in game fishing. It shall be unlawful for any person to lay, set, use, or prepare any drug, poison, lime, medicated bait, nets, fish, berries, formaldehyde, dynamite, or other explosives, or any tip-up, snare or net, or trot line, or any wire, string, rope, or cable of any kind, in any of the waters of this state with intent thereby to catch, take or kill any game fish. It shall be unlawful to lay, set or use a net capable of taking game fish in any waters of this state except as permitted by regulation of the department of fisheries: *Provided*, That persons may use small landing nets or under written permit issued by the director may use nets or seines in the taking of non-game fish.

Any person violating any of the provisions of this section is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both such fine and imprisonment. [1955 c 36 § 77.16.060. Prior: 1947 c 275 § 45; Rem. Supp. 1947 § 5992-54.]

77.16.070 Hunting while intoxicated. It shall be unlawful for any person to hunt with firearms while under the influence of intoxicating liquor. [1955 c 36 § 77.16-.070. Prior: 1947 c 275 § 45a; Rem. Supp. 1947 § 5992-55.]

77.16.080 Laying out poison, etc., endangering game. It shall be unlawful for any person to lay, set, or use any poisonous or deleterious substances in any place or manner so as to endanger, injure or kill any game animals, fur-bearing animals, game birds or nongame birds. [1955 c 36 § 77.16.080. Prior: 1947 c 275 § 46; Rem. Supp. 1947 § 5992-56.]

77.16.090 Mutilating or needlessly wasting carcasses. It shall be unlawful for any person to permit any game animal, fur-bearing animal, game bird, or game fish needlessly to go to waste after killing the same or to mutilate any such animal or bird so that the species or sex cannot be determined. [1955 c 36 § 77.16.090. Prior: 1947 c 275 § 47; Rem. Supp. 1947 § 5992-57.]

77.16.100 Use of dogs—Field trials for bird dogs. It shall be unlawful for the owner or any person harboring any dog to directly or negligently permit such dog to pursue or injure any deer or elk, or to allow dogs of any

kind to accompany any person while such person is hunting deer or elk. Any dog found pursuing any game animal or game bird, or molesting the young of any game animal or game bird or destroying the nest of any game bird during the closed season on game animals or game birds may be declared to be a public nuisance. In addition to any penalty imposed by a court of competent jurisdiction, the court may order the dog destroyed.

During the months of April, May, June and July of each year it shall be unlawful to allow bird dogs, or dogs used for hunting upland game birds, to frequent areas where upland game birds may reasonably be expected to be found.

Competitive field trials for hunting dogs, with or without the shooting or use of privately owned birds, may be held only at such times and places, and under such rules and regulations, as shall be prescribed by the commission. [1977 ex.s. c 275 § 1; 1955 c 36 § 77.16-.100. Prior: 1947 c 275 § 48; Rem. Supp. 1947 § 5992-58.]

77.16.110 Firearms, traps and dogs on game reserves. It shall be unlawful for any person to carry firearms or traps within the limits of or take any dog upon a game reserve except on public highways. The director may issue permits to persons holding fishing and hunting licenses for the current year to hunt predatory animals and predatory birds in such reserve at any season of the year, and all bona fide residents therein may keep a dog or dogs as otherwise provided by law. Permits may also be issued for rifle ranges, gun clubs, and shooting galleries which in the judgment of the director will not injure or disturb the game in a reserve. [1955 c 36 § 77.16.110. Prior: 1947 c 275 § 50; Rem. Supp. 1947 § 5992-59.]

77.16.120 Taking of nongame birds—Destruction of nests or eggs of birds. Except as lawfully authorized by permit or license issued by the director, it shall be unlawful for any person to hunt or trap any nongame bird or harmless or song bird or to have in his possession or under his control any of such birds or any part thereof, and unless acting under permit or license so issued, it shall be unlawful for any person to destroy or to have in his possession or under his control the nest or eggs of any game bird, nongame bird, or harmless or song bird. [1955 c 36 § 77.16.120. Prior: 1947 c 275 § 51; Rem. Supp. 1947 § 5992-60.]

77.16.130 Resisting or obstructing officers. It shall be unlawful for any person to resist or obstruct the director, a game protector, deputy, or ex officio game protector, or other peace officer in the discharge of his duty while enforcing the provisions of this title. [1955 c 36 § 77.16.130. Prior: 1947 c 275 § 52; Rem. Supp. 1947 § 5992-61.]

77.16.140 Giving misinformation as to bountied predator. Every person who gives untrue or misleading information as to the time, area, or county in which any predatory animal or bird was hunted, trapped, taken, or killed on which a bounty is being claimed shall be guilty

of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not more than one year or by both such fine and imprisonment. [1955 c 36 § 77.16.140. Prior: 1947 c 275 § 53; Rem. Supp. 1947 § 5992-62.]

77.16.150 Permit required to plant fish, plants, or release animals or birds. Except as authorized by permit or license lawfully issued by the director, and after departmental inspection of the matter sought to be planted, it shall be unlawful for any person to plant any fish, fish fry, spawn, or any aquatic plant in any waters within the state or to release any wild animals or wild birds on any lands within the state. The words "aquatic plant" include the seeds thereof. [1955 c 36 § 77.16.150. Prior: 1951 c 126 § 1; 1947 c 275 § 54; Rem. Supp. 1947 § 5992-63.]

77.16.157 Penalty for violations. The provisions of RCW 77.16.240 shall apply to all violations of RCW 77.16.150 and 77.16.155. [1955 c 36 § 77.16.157. Prior: 1951 c 126 § 3.]

77.16.158 Importation, possession, sale, exchange, etc., of deleterious exotic species of fish or wildlife—
Penalty. Except as authorized by permit or license lawfully issued by the director, or by rule or regulation of the commission, it shall be unlawful for any person to bring into the state, have in his possession within the state, have in his possession for sale or with intent to sell or to expose or offer for sale, or to sell, or to barter for, or to exchange, or to buy, or to have in his possession with intent to ship, or to ship any deleterious exotic species of fish or wildlife. It shall further be unlawful for any common or contract carrier knowingly to transport or receive for shipment any such deleterious exotic species of fish or wildlife.

Any person violating this section shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both such fine and imprisonment. [1971 ex.s. c 166 § 3.]

"Deleterious exotic species of fish or wildlife" defined: RCW 77.08.040.

77.16.160 Injuring fish ladders, guards, screens, etc. It shall be unlawful for any person to break open, open, unlock, damage, interfere with, injure, or destroy any fish ladder, fish guard, screen, fish stop, fish protective device, bypass, or part thereof, or any fish trap operated by the department. [1955 c 36 § 77.16.160. Prior: 1947 c 275 § 55; Rem. Supp. 1947 § 5992-64.]

77.16.170 Robbing or injuring traps—Identification of traps. It shall be unlawful for any person to take any wild animal from a trap not his own, or to spring, pull up, throw away, mutilate, or destroy any trap of licensed trappers, game protectors, or persons employed by the director, or any person authorized by the federal

government to catch fur-bearing or predatory animals. All licensed trappers shall have attached to the chain of the trap an indestructible tag with the true name and address of the owner of trap in English letters not less than one-eighth inch in height. [1955 c 36 § 77.16.170. Prior: 1947 c 275 § 56; Rem. Supp. 1947 § 5992-65.]

77.16.180 Mutilating signs. It shall be unlawful for any person to destroy, tear down, shoot at, deface, or erase any printed matter or signs placed or posted by or under the instructions of the director. [1955 c 36 § 77.16.180. Prior: 1947 c 275 § 57; Rem. Supp. 1947 § 5992-66.]

77.16.190 Unlawful posting of land. It shall be unlawful for any person or his agent or employee wilfully to post any notice or warning or wilfully to warn, drive, or attempt to drive, any person off, or prevent his hunting or fishing on any land not owned or lawfully occupied by such person, his agent, or employee, unless such land is a lawfully established game or game fish reserve. [1955 c 36 § 77.16.190. Prior: 1947 c 275 § 58; Rem. Supp. 1947 § 5992-67.]

77.16.200 Private publication of game laws. No person shall print or cause to be printed a booklet or pamphlet of the game laws or portion thereof except with the approval of the director. [1955 c 36 § 77.16.200. Prior: 1947 c 275 § 59; Rem. Supp. 1947 § 5992-68.]

77.16.210 Fishways to be provided at dams—
Abatement of obstructions. Any person or governmental agency managing, controlling, or owning any dam or other obstruction across any river or stream shall construct and maintain in good condition and repair in connection with such dam or other obstruction durable fishways and fish protective devices in such shape and size that the free passage of all game fish inhabiting such waters will not be obstructed. Such fishways and fish protective devices shall be provided at all times with sufficient water to insure maximum efficiency for the free passage of fish.

Any person violating any of the provisions of this section shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than ninety days and not more than one year or by both such fine or imprisonment.

In addition to the penalty above provided, if any such person be convicted of violating any of the provisions of this title, the dam or other obstruction managed, controlled or owned by such person is hereby declared a public nuisance and shall be subject to abatement as such. [1955 c 36 § 77.16.210. Prior: 1947 c 275 § 60; Rem. Supp. 1947 § 5992-69.]

77.16.220 Screens to be provided at diversion ditches and canals. It shall be unlawful for any person to divert any water from any lake, river, or stream containing game fish unless the ditch, channel, canal, or water pipe

conducting such water is equipped at or near its entrance or intake with a fish guard or screen capable of preventing the passage of game fish into such ditch, channel, or water pipe, and also equipped, if necessary, with a bypass to permit the passage of game fish from immediately in front of the fish guard or screen back to the waters from which said fish are diverted: *Provided*, That no person who is now otherwise lawfully diverting water from any lake, river, or stream shall be deemed guilty of a violation of this section.

It shall also be unlawful for any person who is not now diverting water from any lake, river, or stream to divert any water therefrom until he has first submitted plans for the fish guard, fish screen, or bypass to the director, obtained his approval thereof, installed such fish guard, screen, or bypass, and obtained the director's approval of such installation. It shall be unlawful for any person to construct any such fish guard, fish screen, or bypass without first submitting plans therefor to the director and obtaining his approval thereof as herein provided.

The director may summarily close any ditch, canal, channel, or water pipe owned or operated by any person convicted of any violation of this section and keep the same closed until it is properly equipped with a fish guard, screen, or bypass, in accordance with the provisions herein. [1955 c 36 § 77.16.220. Prior: 1947 c 275 § 61; Rem. Supp. 1947 § 5992-70.]

77.16.221 Director may modify, etc., inadequate fishways and protective devices. In the event any fish passage facility or fish protective device as set forth in RCW 77.16.210 and 77.16.220 which have been in existence or are existing at the time of enactment of this act, is determined by the director to be inadequate for the purposes for which it was intended; the director in addition to other authority granted in this chapter may in his discretion, remove, relocate, reconstruct, or modify said device, without cost for materials and labor to the owner or owners thereof: *Provided*, That the director may not materially modify the amount of flow of water through the facility or device. Thereafter such fish passage facility or fish protective device shall be maintained at the expense of the person or governmental agency owning said obstruction or water diversion in accordance with RCW 77.16.210 and 77.16.220. [1963 c 152 § 1.]

Director of fisheries may modify, etc., inadequate fishways and protective devices: RCW 75.20.061.

77.16.230 Game doing damage may be taken at any time—Limitations. It shall be lawful for the owner or tenant of any real property on which any crop is being grown or any domestic animals or fowl are being kept to trap or kill at any time on such property, any wild animal or wild bird which is destroying any such crop, or injuring domestic animals or fowl, or any dike, drain or irrigation ditch. Such wild animal or wild bird, when so trapped or killed, shall remain the property of the state, and the person trapping or killing the same shall immediately notify the nearest state game protector as to where such wild animal or wild bird may be found.

It shall be unlawful for any person, after trapping or killing any wild animal or wild bird as above provided, to give away, eat, sell, or dispose of the same or any part thereof for profit: *Provided*, That this section shall not prohibit any license holder from trapping, killing, possessing, or disposing of any wild animal or wild bird as otherwise provided by law or rule and regulation of the commission.

For purposes of this section the word "crop" is defined as meaning an agricultural or horticultural seeded or planted crop and shall exclude all wild shrubs and range land. [1955 c 36 § 77.16.230. Prior: 1949 c 238 § 2; 1947 c 275 § 62; Rem. Supp. 1949 § 5992-71.]

77.16.240 General penalty—Jurisdiction of courts. Any person violating or failing to comply with any rule or regulation of the commission or violating any of the provisions of this title for which no penalty is provided, shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not less than ten dollars, together with the cost of prosecution, or by imprisonment for not exceeding ninety days in the county jail or by both such fine and imprisonment. The killing or taking of every single bird, animal or fish, protected by the laws of this state, shall constitute a separate offense.

Every justice of the peace shall have jurisdiction concurrent with the superior courts of all misdemeanors and gross misdemeanors committed in violation of the provisions of this title and may impose any punishment in this title provided for such offenses. [1955 c 36 § 77.16.240. Prior: 1947 c 275 § 63; Rem. Supp. 1947 § 5992-72.]

77.16.250 Carrying loaded shotgun or rifle in vehicles. It shall be unlawful for any person to carry, transport or convey, or to have in his possession or under his control in any motor-driven or horse-drawn vehicle or in any vehicle propelled by man, any shotgun or rifle containing shells or cartridges therein. [1955 c 36 § 77.16.250. Prior: 1947 c 126 § 1; Rem. Supp. 1947 § 2545-1.]

77.16.260 Shooting firearm on public highway—Firing artillery across highway. It shall be unlawful for any person to shoot any pistol, rifle, shotgun or other firearm from, across or along any public highway. This section shall not apply to artillery fire from authorized military activities within the confines of the Fort Lewis military reservation if proper precautions are taken to safeguard life and property if the authority conducting the military maneuvers assumes responsibility for any damages therefrom resulting to users of the highway. No public highway shall be closed to traffic by the military for purposes hereunder without the consent of the governing body exercising jurisdiction over the highway. [1955 c 85 § 1; 1955 c 36 § 77.16.260. Prior: 1947 c 126 § 2; Rem. Supp. 1947 § 2545-2.]

77.16.270 Enforcement. It shall be the duty of all sheriffs, deputy sheriffs, constables, city marshals, police officers, state game protectors, deputy game protectors, and ex officio game protectors, within their respective jurisdictions, to enforce all of the provisions of RCW

77.16.250 and 77.16.260. [1955 c 36 § 77.16.270. Prior: 1947 c 126 § 3; Rem. Supp. 1947 § 2545-3.]

77.16.280 Penalty. Any person violating any of the provisions of RCW 77.16.250 and 77.16.260 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars and not more than one hundred dollars or by imprisonment in the county jail for not less than ten days and not more than ninety days or by both such fine and imprisonment. [1955 c 36 § 77.16.280. Prior: 1947 c 126 § 4; Rem. Supp. 1947 § 2545-4.]

77.16.290 Law enforcement officers excluded. The word "person" as used in RCW 77.16.250 and 77.16.260 does not include any law enforcement officer who is authorized to carry firearms. [1955 c 36 § 77.16.290. Prior: 1947 c 126 § 5; Rem. Supp. 1947 § 2545-5.]

77.16.300 Venue of prosecution. Any action charging a violation of RCW 77.16.250 through 77.16.290 shall be instituted in the justice court in one of the two incorporated cities or towns nearest the place where the violation is alleged to have been committed. [1955 c 36 § 77.16.300. Prior: 1947 c 126 § 6; Rem. Supp. 1947 § 2545-6.]

Chapter 77.20 BEAVER

Sections	
77.20.010	Beaver may be taken or possessed—Pelts may be sold.
77.20.015	Licensed residents may take—Beaver tags required, fee, style, duration.
77.20.016	Beaver tags—Possession, attachment—Purchase of untagged skin—Penalty.
77.20.020	Rules and regulations—Cooperative agreements.
77.20.030	Beaver skins, disposal of.
77.20.040	Taking of beaver doing damage on private lands—On public lands—By commission.
77.20.045	Taking of beaver doing damage—By owner or occupant—Notice—Surrender of pelts.
77.20.050	Preservation, tagging, of skins.
77.20.060	Penalty.

77.20.010 Beaver may be taken or possessed—Pelts may be sold. For the purpose of properly administering, perpetuating, protecting, and maintaining the beaver of the state, the same is hereby declared to be a fur-bearing animal and may be hunted, trapped, killed, or possessed, or the pelts thereof sold, as provided in this chapter. [1963 c 177 § 1; 1955 c 36 § 77.20.010. Prior: 1947 c 275 § 64; Rem. Supp. 1947 § 5992-73.]

77.20.015 Licensed residents may take—Beaver tags required, fee, style, duration. It shall be lawful for any resident, licensed under *RCW 77.32.190, to trap, hunt, or kill beaver for their skins in such areas and at such times as the commission by rule or regulation may permit.

It shall be unlawful for a licensee to trap, hunt, or kill beaver without first having procured from the director a tag or tags to be known as supplemental beaver tags.

The fee for issuing and procuring each tag shall be two dollars on and after July 1, 1975, and shall be paid in addition to all other license fee prescribed by law. Beaver tags shall be prepared and distributed under the supervision of the director in such number and manner each year as he deems advisable. The tags shall bear the name "department of game of the state of Washington" and the year for which it is issued, and any other distinguishing marks deemed necessary by the director. The tags shall be void on the first day of April next following the date of issuance. [1975 1st ex.s. c 15 § 1; 1963 c 177 § 10.]

*Reviser's note: "RCW 77.32.190" expired December 31, 1975, see RCW 77.32.191 for later enactment.

77.20.016 Beaver tags—Possession, attachment—Purchase of untagged skin—Penalty. Beaver tags shall be in the possession of all persons while they are engaged in trapping beaver. Any person who traps a beaver shall as soon as feasible attach one of his tags to the skin. No person shall purchase from any trapper any skin that does not bear a supplemental beaver tag.

Any person violating any provision of this section shall be subject to the penalties provided in RCW 77.20.060. [1963 c 177 § 11.]

77.20.020 Rules and regulations—Cooperative agreements. The commission may make reasonable rules and regulations for purposes of administration and enforcement of the laws pertaining to beaver and regulating the propagation, hunting, trapping, killing, and possession of beaver and the sale of beaver skins. The commission, through the director, may enter into cooperative agreements with private landowners for the hunting, trapping, and killing of beaver upon the land of such owners. Under such agreements the commission, through the director, shall designate the maximum number of beaver which may be taken each year from the land of the owner. All taking, hunting, trapping, or killing of beaver under cooperative agreements shall be done only by the commission, acting through the director or his duly authorized representatives, with costs thereof to be paid out of the state game fund. [1963 c 177 § 2; 1955 c 36 § 77.20.020. Prior: 1947 c 275 § 65; Rem. Supp. 1947 § 5992-74.]

77.20.030 Beaver skins, disposal of. All beaver skins obtained by the director or his representatives under this title shall be sold to licensed fur buyers only at auction to the highest bidder. The time of any sale shall be within the discretion of the director. From the proceeds of sales there shall be paid to the owner of the land upon which the beaver was taken under any cooperative agreement, such amount as was stipulated therein and the balance of the proceeds shall be deposited in the state game fund. In the making of any cooperative agreement under the provisions of this title, the commission, through the director, may provide for such compensation to the landowner as may be deemed just and reasonable based upon a percentage payment per pelt sold or upon a fixed fee basis or otherwise. [1963 c 177

§ 3; 1955 c 36 § 77.20.030. Prior: 1947 c 275 § 66; Rem. Supp. 1947 § 5992-75.]

77.20.040 Taking of beaver doing damage on private lands—On public lands—By commission. The commission, through the director or his duly authorized representatives, may hunt, trap, or kill beaver on private lands when the owners thereof are suffering damage. Beaver may likewise be hunted, trapped, or killed on public lands by the director or his duly authorized representatives whenever and wherever the commission deems it necessary and advisable. [1963 c 177 § 4; 1955 c 36 § 77.20.040. Prior: 1947 c 275 § 67; Rem. Supp. 1947 § 5992-76.]

77.20.045 Taking of beaver doing damage—By owner or occupant—Notice—Surrender of pelts. If beavers or other burrowing animals are damaging, or endangering any land the owner or occupant of such land may trap or kill such animals. If he does so, such person must notify the commission regarding the number of the animals disposed of and when possible, surrender the pelts thereto to the commission. [1963 c 177 § 5; 1955 c 36 § 77.20.045. Prior: 1951 c 262 § 1.]

77.20.050 Preservation, tagging, of skins. Prior to sale all beaver skins to be sold under the provisions of RCW 77.20.030 shall be properly cared for, preserved, and tagged or sealed by the director or his representatives. [1963 c 177 § 6; 1955 c 36 § 77.20.050. Prior: 1947 c 275 § 68; Rem. Supp. 1947 § 5992-77.]

77.20.060 Penalty. The hunting, trapping, taking, or killing of any beaver or the possession of the skin or any part of any beaver killed within this state, except as authorized in this title, is unlawful, and any person hunting, trapping, taking, or killing any beaver or possessing the skin or any part thereof in violation of this title, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment for not less than thirty days and not more than six months or by both such fine and imprisonment. [1955 c 36 § 77.20.060. Prior: 1947 c 275 § 69; Rem. Supp. 1947 § 5992-78.]

Chapter 77.24

PREDATORS—BOUNTIES

Sections

77.24.010	Who may kill predators and claim bounties.
77.24.020	Payment of bounties—Maximum specified—Review.
77.24.030	Marking of bountied predators.
77.24.040	Commission may classify predators.
77.24.050	Employment of accredited hunters.
77.24.060	Disposition of skins and specimens.
77.24.070	Scope of chapter.
77.24.080	Bounty voucher must aggregate two dollars and fifty cents.
77.24.090	Cooperative programs to control predators.
77.24.100	Department of agriculture may cooperate with Fish and Wildlife Service.
77.24.110	Expenditures authorized.

77.24.120 Disposition of skins and specimens.

77.24.010 Who may kill predators and claim bounties. Any resident holder of a state or county hunting and fishing license may hunt, trap, take, or kill any animal or bird classified as predatory in areas and at times designated by the commission and may present such animal or bird to the director or to any person designated by the director as qualified to check bountied predators for payment of bounty. Any citizen of the United States under the age of sixteen years who has been an actual resident of the state for the preceding six months shall not be required to hold a state or county hunting and fishing license to comply with this chapter. [1955 c 36 § 77.24.010. Prior: 1947 c 275 § 72; Rem. Supp. 1947 § 5992-81.]

77.24.020 Payment of bounties—Maximum specified—Review. Whenever the holder of a state or county hunting and fishing license hunts, traps, takes, or kills any animal or bird classified by the commission as a predator, and furnishes proof thereof, he may be paid a bounty in such amount as specified by the rules and regulations of the commission. Any person who desires to collect a bounty shall furnish such proof and evidence of hunting, trapping, taking, or killing the predator as the commission may require. If the director has reason to doubt the validity of a bounty claim he may deny it, and if a bounty claim is denied, the bounty claimant may appeal to the superior court of the county in which the predators or any of them were hunted, trapped, taken, or killed. The burden of proof as to the method of hunting, trapping, taking, or killing and the area wherein the predator was hunted, trapped, taken, or killed shall be upon the bounty claimant.

Bounties, as fixed by the commission, may in no event exceed the following sums: Cougar, one hundred dollars; lynx, twenty-five dollars; bobcat, twenty-five dollars; coyote, twenty dollars; coyote pup, five dollars; any other animal or bird classified by the commission as predatory, five dollars.

Bounty payments shall be made from any moneys which may be appropriated therefor by the legislature. All moneys appropriated for such payments shall be expended under the direction of and upon vouchers approved by the director. [1955 c 36 § 77.24.020. Prior: 1947 c 275 § 73; Rem. Supp. 1947 § 5992-82.]

77.24.030 Marking of bountied predators. Before payment of a bounty, the animal or bird or such part thereof as shall be designated by the commission shall be surrendered to the director, or person designated by the director as qualified to check bountied predators, who shall mark such predator or part thereof in order that it can be later identified and, after so marking it, the director or designated person shall return the predator or part thereof to the person hunting, trapping, taking, or killing the same. [1955 c 36 § 77.24.030. Prior: 1947 c 275 § 74; Rem. Supp. 1947 § 5992-83.]

77.24.040 Commission may classify predators. The commission, upon finding any animal or bird destructive

to wild game, domestic herds, birds, and flocks may by rule and regulation classify it as predatory and authorize and control the hunting, trapping, taking, or killing thereof. [1955 c 36 § 77.24.040. Prior: 1947 c 275 § 75; Rem. Supp. 1947 § 5992-84.]

77.24.050 Employment of accredited hunters. The director shall, from time to time, appoint and employ such number of persons, skilled in hunting, trapping, taking or killing predatory animals and birds, as he deems advisable, to be known as accredited hunters, to carry on the work of eradication and control of predatory animals and birds in this state. [1955 c 36 § 77.24.050. Prior: 1947 c 275 § 76; Rem. Supp. 1947 § 5992-85.]

77.24.060 Disposition of skins and specimens. All skins and specimens taken by accredited hunters whose salaries are paid out of moneys appropriated from the state game fund shall be disposed of in such manner as the director determines to be for the best interest of the state. If any such skins or specimens are sold, the net proceeds shall be deposited to the credit of the state game fund. [1955 c 36 § 77.24.060. Prior: 1947 c 275 § 77; Rem. Supp. 1947 § 5992-86.]

77.24.070 Scope of chapter. Nothing herein shall be deemed in derogation of the power and authority of the director of agriculture to cooperate with the United States Fish and Wildlife Service in the control and destruction of predatory animals injurious to livestock, poultry, and the public health. [1955 c 36 § 77.24.070. Prior: 1947 c 275 § 78; Rem. Supp. 1947 § 5992-87.]

77.24.080 Bounty voucher must aggregate two dollars and fifty cents. For the purpose of facilitating the payment of bounties, no voucher therefor shall be issued in payment thereof until the aggregate bounty claim is at least two dollars and fifty cents. [1955 c 36 § 77.24.080. Prior: 1947 c 275 § 79; Rem. Supp. 1947 § 5992-88.]

77.24.090 Cooperative programs to control predators. The director may enter into cooperative programs to control predators with sportsmen's groups, granges, or others. [1955 c 36 § 77.24.090. Prior: 1947 c 275 § 80; Rem. Supp. 1947 § 5992-89.]

77.24.100 Department of agriculture may cooperate with Fish and Wildlife Service. The department of agriculture shall cooperate with the Fish and Wildlife Service, in the control and destruction of predatory animals which are injurious to livestock, poultry, game, and the public health, in accordance with organized and systematic plans of the Fish and Wildlife Service. For this purpose said department may enter into written agreements with the Fish and Wildlife Service covering the methods and procedure to be followed, the extent of supervision to be exercised by each and the use and expenditure of the funds appropriated therefor. The department, in cooperation with the Fish and Wildlife Service, may also

enter into cooperative agreements with other governmental agencies, counties, or persons when deemed necessary to promote the control and destruction of predatory animals. [1955 c 36 § 77.24.100. Prior: 1943 c 257 § 1; Rem. Supp. 1943 § 5992-2.]

77.24.110 Expenditures authorized. The department of agriculture may make such expenditures for equipment, materials, supplies, and other expenses, including expenditures for personal services, as may be necessary to execute the functions imposed upon it by RCW 77.24.100. [1955 c 36 § 77.24.110. Prior: 1943 c 257 § 2; Rem. Supp. 1943 § 5992-3.]

77.24.120 Disposition of skins and specimens. All skins and specimens taken by hunters whose salaries are paid out of funds appropriated for the administration of RCW 77.24.100 and 77.24.110 shall be disposed of in such manner as the department of agriculture determines to be in the best interest of the state. If any such skins or specimens are sold, the net proceeds shall be deposited to the credit of the general fund of the state. [1955 c 36 § 77.24.120. Prior: 1943 c 257 § 3; Rem. Supp. 1943 § 5992-4.]

Chapter 77.28

GAME FARMERS

Sections

77.28.010	License required.
77.28.020	License fee.
77.28.030	Application—Content.
77.28.040	Corporate application.
77.28.050	Issuance of license.
77.28.060	Rights acquired under license.
77.28.070	Game farmer may deal in game bird and game fish eggs.
77.28.080	Tagging of product.
77.28.090	Rights of common carriers.
77.28.100	Quarterly reports.
77.28.110	Access to game farmers' premises.
77.28.120	Revocation of license—Notice—Hearing.

77.28.010 License required. The acquisition, breeding, growing, keeping, and sale of wild animals, wild birds, or game fish, whether living or dead, for commercial purposes shall be unlawful unless such acquisition, breeding, growing, keeping and sale is conducted under a game farmer's license as hereinafter provided and in accordance with rules and regulations of the commission which may be prescribed therefor regarding the species of wild animals, wild birds, or game fish which may be acquired, bred, grown, kept, and sold under this title, the particular areas in this state wherein such activities may be carried on and the manner of conducting all such activities. [1955 c 36 § 77.28.010. Prior: 1947 c 275 § 81; Rem. Supp. 1947 § 5992-90.]

77.28.020 License fee. The director may cause to be issued a game farmer's license that shall authorize the licensee to acquire, grow, breed, keep, or sell all or some of such species of wild animals, wild birds, and game fish as may be designated by the commission as suitable for such acquisition, breeding, growing, keeping, and

sale. The cost of such license shall be forty-one dollars for the first year and twenty-one dollars for each yearly renewal thereafter. All such licenses shall expire on December 31st annually and application for renewal shall be made prior thereto. [1975 1st ex.s. c 15 § 2; 1970 ex.s. c 29 § 14; 1955 c 36 § 77.28.020. Prior: 1947 c 275 § 82; Rem. Supp. 1947 § 5992-91.]

77.28.030 Application—Content. A verified application for such license made in triplicate shall be filed by the applicant with the director which application shall contain the following: A description of the lands and waters which applicant desires to use under the required license; the particular right, title or interest of the applicant in said lands and waters and the total acreage thereof; the extent of improvement upon such lands and waters; a map or diagram of such lands and waters showing where the improvements are located thereon; a statement indicating the species of wild animals, wild birds, or game fish which the applicant desires to acquire, breed, grow, keep, and sell; and such further information as may be required by rule and regulation of the commission. [1955 c 36 § 77.28.030. Prior: 1947 c 275 § 83; Rem. Supp. 1947 § 5992-92.]

77.28.040 Corporate application. If the applicant is a corporation, the application shall be made in the name of the corporation by the president or authorized officer thereof and shall set forth the names and addresses of all the officers and directors of the corporation and the number of shares of stock owned by such officers and directors. If the applicant is a partnership or unincorporated association, the application shall be made by an authorized partner, member or managing officer and shall set forth the names and addresses of all members of the partnership or association together with their respective financial interests and other rights of ownership and control therein. [1955 c 36 § 77.28.040. Prior: 1947 c 275 § 84; Rem. Supp. 1947 § 5992-93.]

77.28.050 Issuance of license. If after investigation by the director it appears that the applicant is the owner or tenant of or has a possessory interest in the lands, waters, and riparian rights shown in the application and that the applicant intends in good faith to establish, operate and maintain a farm for the raising of wild animals, wild birds, or game fish in accordance with law and the rules and regulations of the commission, the director may issue a license to the applicant describing therein the lands and waters and certifying that the licensee is lawfully entitled to use the same for acquiring, breeding, growing, keeping, and selling the kinds of wild animals, wild birds, or game fish specified in such license. [1955 c 36 § 77.28.050. Prior: 1947 c 275 § 85; Rem. Supp. 1947 § 5992-94.]

77.28.060 Rights acquired under license. After such game farmer's license has been granted, the licensee shall be lawfully entitled to acquire, breed, grow, keep, and sell all or any of the wild animals, wild birds, or game fish specified in the license in accordance with law and with the rules and regulations of the commission.

[1955 c 36 § 77.28.060. Prior: 1947 c 275 § 86; Rem. Supp. 1947 § 5992-95.]

77.28.070 Game farmer may deal in game bird and game fish eggs. A licensed game farmer may purchase, sell, give away, or dispose of the eggs of any game bird or game fish lawfully in his possession in such manner as may be provided by rule and regulation of the commission. [1955 c 36 § 77.28.070. Prior: 1947 c 275 § 87; Rem. Supp. 1947 § 5992-96.]

77.28.080 Tagging of product. All wild animals, wild birds or game fish given away, sold, or in any manner transferred to any person by any licensed game farmer shall, upon delivery thereof, have attached to each such animal, bird or fish, such tag or seal as may be prescribed by the commission.

It shall be unlawful for any person other than a licensed game farmer to keep or possess any such wild animal, wild bird, or game fish without such tag or seal attached thereto: *Provided*, That any wild animal, wild bird or game fish may be served for food without such tag or seal then being thereon. [1955 c 36 § 77.28.080. Prior: 1947 c 275 § 88; Rem. Supp. 1947 § 5992-97.]

77.28.090 Rights of common carriers. A common carrier may at any time transport any wild animal, wild bird or game fish or part thereof shipped by the holder of a game farmer's license if such wild animal, wild bird, game fish, or such part thereof is tagged or sealed as aforesaid. Every package containing the tagged or sealed carcass of any wild animal, wild bird, or game fish, or any tagged or sealed part thereof, shall have affixed thereto an additional tag or label upon which shall be plainly written or printed the name of the licensee and the name of the consignee. [1955 c 36 § 77.28.090. Prior: 1947 c 275 § 89; Rem. Supp. 1947 § 5992-98.]

77.28.100 Quarterly reports. Every holder of a game farmer's license shall make quarterly reports on the first day of January, April, July and October to the director on blanks to be furnished by the director. Such reports shall give a correct statement of the total number of wild animals, wild birds or game fish owned, killed, transported or sold during the quarter; the names of the persons to whom they were transported or sold; the names of the persons by whom they were tagged or sealed; the increase of all classes of wild animals, wild birds, or game fish held by the licensee; and such other data as may be required by rule and regulation of the commission. Each such report shall be verified by the affidavit of the licensee. [1955 c 36 § 77.28.100. Prior: 1947 c 275 § 90; Rem. Supp. 1947 § 5992-99.]

77.28.110 Access to game farmers' premises. The director or any other officer authorized by him may at all reasonable times with or without warrant, enter and search the premises of any licensed game farmer and inspect his records for the purposes of investigating and determining the number, kind and condition of wild animals, wild birds and game fish possessed by the licensee,

or for purposes of enforcing the provisions of this chapter and the rules and regulations of the commission. [1955 c 36 § 77.28.110. Prior: 1947 c 275 § 91; Rem. Supp. 1947 § 5992-100.]

77.28.120 Revocation of license—Notice—Hearing. Whenever there shall be filed with the director a verified complaint charging that the holder of any game farmer's license has been guilty of any act or omission in violation of law pertaining to wild animal, wild bird or game fish or any rule or regulation of the commission, the director shall immediately note such complaint for hearing before the commission at its next regular meeting. The director shall notify the licensee of any such hearing at least ten days in advance thereof by mailing to him at the address shown on his application for game farmer's license a copy of the aforesaid complaint and a notice of the time and place of holding such hearing.

All such hearings shall be summary before the commission and the licensee shall be given an opportunity to be heard. The commission shall have the power to administer oaths, issue subpoenas for the attendance of witnesses, and the production of books, accounts, documents, and papers, and examine witnesses. At the conclusion of any such hearing, the commission may revoke or cancel the game farmer's license. Any such decision by the commission may be appealed to the superior court of the county in which the game farm is located, within thirty days from receipt of written notice of such revocation or cancellation. Unless the appeal be filed within the time aforesaid, the decision of the commission shall be final. In the event of any such revocation or cancellation of any such license, or upon termination of any proceedings for review, the director shall immediately mail notice of such revocation or cancellation to the licensee. After the expiration of ten days following the mailing of the notice by such director, it shall be unlawful for any such licensee whose license is so revoked or canceled to acquire any wild animal, wild bird, or game fish in the manner provided by law or by rule or regulation of the commission for acquisition of such animals, birds, or fish by game farmers. After the expiration of sixty days following the mailing of such notice by the director, it shall be unlawful for any licensee whose license is so revoked or canceled to hold, keep, breed, grow, possess, or sell any wild animal, wild bird, or game fish in the manner provided by law or by rule and regulation of the commission for holding, keeping, breeding, growing, possessing, or selling such animals, birds, or fish by game farmers. [1955 c 36 § 77.28.120. Prior: 1947 c 275 § 92; Rem. Supp. 1947 § 5992-101.]

Chapter 77.32 LICENSES

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77.32.005 Definitions. For the purposes of this chapter:

A "resident" means any citizen of the United States or person who has in good faith declared his intention of becoming a citizen of the United States, and who for at least ninety days immediately preceding any application for a license has maintained a permanent place of abode within this state and has established by formal evidence his intent to continue his residence within this state.

An "alien" means any person who is not a citizen of the United States and has not in good faith declared his intention of becoming a citizen of the United States.

A "nonresident" means any person who is neither a "resident" nor an "alien" as defined in this section. [1961 c 94 § 1; 1957 c 176 § 14.]

77.32.010 General rules as to issuance. It shall be unlawful for any person to hunt, trap, or fish for game animals, fur-bearing animals, game birds or game fish during the season when it is lawful to hunt, trap, or fish for them or to practice taxidermy for profit, or to receive or purchase or resell raw furs for profit, without first having procured and having in force, and in his personal possession, and on his person while so hunting, trapping, fishing, or practicing taxidermy, or dealing in furs, a license so to do issued to him as provided in this chapter: *Provided*, That nothing in this section shall prevent a

person under the age of sixteen years, from fishing at any time when it is otherwise lawful to fish: *Provided further*, That any person over the age of seventy years who has been a resident of Washington for ten years or more shall be issued, upon making an affidavit to such effect, a license to fish at any time when it is otherwise lawful to fish. The state game commission in its discretion may authorize license dealers to issue such licenses and make a charge therefor which shall not exceed fifty cents: *Provided, further*, That a license shall not be required of a person who hunts predatory animals or birds without claiming or intending to claim a bounty.

All licenses under this chapter shall be issued by or under the authority of the director, who may deputize game protectors, any county auditor, or any reputable citizen, to issue such licenses and collect the fees therefor.

All persons so deputized by the director shall, on demand, on or before the thirty-first day of December of each year, pay to the director all fees collected and make and furnish all reports required by the director. The commission may make all necessary rules and regulations regarding the issuance of licenses, the collection and payment of fees collected, and the making and furnishing of reports in connection therewith. [1979 1st ex.s. c 3 § 1; 1959 c 245 § 1; 1955 c 36 § 77.32.010. Prior: 1947 c 275 § 93; Rem. Supp. 1947 § 5992-102.]

77.32.015 Firearm training program—Certificate—Juvenile requirements. The commission may, as a condition precedent to the granting of a hunting license, require that all persons seventeen years of age or younger present a certificate stating that the holder has completed a course of instruction of at least four hours in the safe handling of firearms.

The commission is authorized to establish a program for training persons in the safe handling of firearms, and for this purpose may cooperate with the National Rifle Association, organized sportsmen's groups, or any public or private association or organization having as one of its objectives the promotion of safety in firearms handling.

The commission shall prescribe the type of instruction, the qualifications of the instructors, and has the right to except certain areas from the requirements of such instruction when facilities for giving instruction are not available.

Each trainee, upon successful completion of the course shall be furnished a firearms safety certificate which shall be signed by an authorized instructor and which certificate shall be considered as compliance with this section for the purpose of obtaining a hunting license. [1957 c 17 § 1.]

77.32.020 Supplemental seals—Tags—Permits—Deer, elk, mountain goat, mountain sheep, wild turkey, bear—Birds—Bow and arrow—Muzzle-loading rifles—Penalties. It shall be unlawful for any person to hunt or kill deer without first having procured from the director a tag to be known as a supplemental deer seal, which tag shall be procured, in addition to any other license, to hunt game animals required by law. The

fee for issuing and procuring such tag shall be five dollars on and after July 1, 1975, and shall be paid in addition to all other license fees prescribed by law. It shall be unlawful for any person to hunt or kill elk without first having procured from the director a tag to be known as a supplemental elk seal, which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be eleven dollars on and after July 1, 1975, and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any person to hunt or kill mountain goat without first having procured from the director a tag to be known as a supplemental goat seal, which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be eleven dollars on and after July 1, 1975, and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any person to hunt or kill mountain sheep without first having procured from the director a tag to be known as a supplemental mountain sheep seal, which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be eleven dollars on and after July 1, 1975, and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any person to hunt or kill wild turkey without first having procured from the director a tag to be known as a supplemental wild turkey seal, which tag shall be procured in addition to any other license to hunt game birds required by law. The fee for issuing and procuring such tag shall be two dollars until December 31, 1975, and three dollars thereafter and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any person to hunt or kill bear in any place where bear is classified as a game animal without first having procured from the director a tag to be known as a supplemental bear seal, which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be two dollars until December 31, 1975, and three dollars thereafter and shall be paid in addition to all other license fees prescribed by law: *Provided*, That the director may issue permits for the control of bears in areas where, in his opinion, property is being damaged. No tag will be required for any bear killed to control damage.

It shall be unlawful for any nonresident or alien to hunt or kill elk without first having procured from the director a tag to be known as a supplemental nonresident elk seal which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be forty-two dollars on and after July 1, 1975, and shall be paid in addition to all other license fees provided by law.

It shall be unlawful for any nonresident or alien to hunt or kill mountain goat without first having procured from the director a tag to be known as a supplemental

nonresident goat seal which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be forty-two dollars on and after July 1, 1975, and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any nonresident or alien to hunt or kill mountain sheep without first having procured from the director a tag to be known as a supplemental mountain sheep seal, which tag shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such tag shall be forty-two dollars on and after July 1, 1975, and shall be paid in addition to all other license fees prescribed by law.

It shall be unlawful for any person to hunt or kill any pheasant, quail, or partridge without first having procured from the director an upland bird permit, which permit shall be procured in addition to any other license to hunt game animals required by law. The fee for issuing and procuring such permit shall be three dollars on and after July 1, 1975.

It shall be unlawful for any person to hunt or kill wild animals or birds with a bow and arrow or muzzle-loading rifle during any special seasons established exclusively for bow and arrow or muzzle-loading rifle without first procuring from the director a permit to be known as an archery and/or muzzle-loading rifle permit, which permit shall be procured in addition to any other license to hunt game animals or birds required by law. The fee for issuing and procuring such permit shall be six dollars on and after July 1, 1975.

Such tags or permits shall be in the possession of all persons while engaged in hunting deer, elk, mountain goat, mountain sheep, wild turkey, bear, pheasant, quail, or partridge; or any game animals during special bow and arrow or muzzle-loading rifle seasons. Such tags or permits shall be prepared by and under the supervision of the director and shall bear the name "department of game of the state of Washington" and the year for which it is issued, and any other distinguishing marks deemed necessary by the director, and shall be void on the first day of April next following the date of issuance. Any person who kills any deer, elk, mountain goat, mountain sheep, wild turkey, or bear shall immediately attach his own tag to the carcass of any such animal or bird and properly seal the same. All moneys received from the issuance or sale of tags or permits as provided herein shall be paid into the state game fund. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars and not more than two hundred fifty dollars or by imprisonment in the county jail for not less than ten days and not more than thirty days or by both such fine and imprisonment. [1975 1st ex.s. c 15 § 3; 1970 ex.s. c 29 § 1; 1967 c 10 § 1; 1957 c 176 § 1; 1955 c 36 § 77.32.020. Prior: 1953 c 75 § 1; 1947 c 275 § 94; 1945 c 81 § 7; 1937 c 63 § 2; 1935 c 59 § 4; Rem. Supp. 1947 § 5992-103.]

Effective date—1970 ex.s. c 29: "The effective date of this 1970 amendatory act shall be January 1, 1971." [1970 ex.s. c 29 § 16.] This applies to the 1970 amendments to RCW 77.28.020, 77.32.020, 77.32-.060, 77.32.100-77.32.113, 77.32.130-77.32.160, 77.32.190, 77.32.200, 77.32.225 and to RCW 77.32.255.

77.32.032 Supplemental steelhead seal—Fee, exempt persons, disposition of moneys from—Penalty. It shall be unlawful for any person to fish for or take steelhead without first having procured from the director a seal to be known as a supplemental steelhead seal, which shall be procured, in addition to any other license, to fish for steelhead required by law. This seal shall be in the possession of all persons while engaged in fishing for steelhead.

The seal shall be prepared by and under the supervision of the director, and it shall bear the name "Department of Game of the State of Washington", the time period for which it is issued, and any other distinguishing marks deemed necessary by the director. The procuring fee shall be three dollars and shall be in addition to other license fees prescribed by law: *Provided*, That this fee shall not apply to juveniles and free license holders. All moneys received from the issuance or sale of the seal provided herein shall be paid into the state game fund.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not less than twenty-five dollars nor more than two hundred fifty dollars or by imprisonment in the county jail for not less than ten days nor more than thirty days or by both such fine and imprisonment. [1975 1st ex.s. c 15 § 19.]

Effective dates—1975 1st ex.s. c 15: "Section 19 of this 1975 amendatory act shall be effective April 1, 1976. Sections 20 through 32 of this 1975 amendatory act shall be effective January 1, 1976." [1975 1st ex.s. c 15 § 34.] This applies to RCW 77.32.032, 77.32.101, 77.32.104, 77.32.106, 77.32.111, 77.32.114, 77.32.131, 77.32.151, 77.32.161, 77.32.191, 77.32.201, 77.32.211, 77.32.226, and 77.32.256.

77.32.050 Issuer's compensation—State licenses. Any person deputized by the director to issue combination state hunting and fishing licenses and trapping, taxidermy, or fur dealer licenses, as authorized by this chapter, shall charge a sum not to exceed fifty cents in addition to collecting the fees prescribed by law for issuing each such license, which sum shall be retained by him for his services. [1979 1st ex.s. c 3 § 2; 1955 c 36 § 77.32.050. Prior: 1953 c 75 § 2; 1947 c 275 § 97; Rem. Supp. 1947 § 5992-106.]

77.32.060 Issuer's compensation—Licenses, state, county—Special permits and tags. Any person deputized by the director to issue combination county hunting and fishing licenses, state resident fishing licenses, state resident hunting licenses, nonresident state fishing licenses, nonresident state hunting licenses, and nonresident state transient licenses, and special permits and tags shall charge a sum not to exceed fifty cents in addition to collecting the fee prescribed by law, for issuing each such license, and a sum not to exceed twenty-five cents for issuing each tag or permit, which sum shall be retained by him for his services. [1979 1st ex.s. c 3 § 3;

1970 ex.s. c 29 § 2; 1957 c 176 § 2; 1955 c 36 § 77.32-.060. Prior: 1953 c 75 § 3; 1947 c 275 § 98; Rem. Supp. 1947 § 5992-107.]

Effective date—1957 c 176: "Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13 above shall become effective on January 1, 1958." [1957 c 176 § 15.] This applies to RCW 77.32.060, 77.32.100, 77.32.103, 77.32-.105, 77.32.110, 77.32.113, 77.32.130, 77.32.150, 77.32.160, 77.32.225 and the repeal of RCW 77.32.140.

77.32.070 Information required in application. Every application for a license shall be in writing on a blank form to be furnished for that purpose and signed by the applicant and shall contain information concerning sex, citizenship, age, place of residence, and any other matters required by rule and regulation of the commission. [1955 c 36 § 77.32.070. Prior: 1947 c 275 § 99; Rem. Supp. 1947 § 5992-108.]

77.32.080 Records and reports. The commission may adopt rules and regulations requiring records to be kept and reports to be made by licensees concerning the time, manner, and place of taking any wild animals, wild birds, or game fish, the quantities taken, and such other information as may be helpful in enforcing the provisions of this title or the rules and regulations of the commission. Such rules and regulations may prescribe the form of such records and reports and may require licensees to keep such records current while hunting, fishing, or trapping, and to display the same, and may authorize the director to prepare and distribute such record and report forms to licensees. [1955 c 36 § 77-.32.080. Prior: 1947 c 275 § 100; Rem. Supp. 1947 § 5992-109.]

77.32.090 Form of licenses. Licenses issued under this title shall be in such form, of such materials, and of such colors as may be designated by the commission, and the commission may adopt rules and regulations pertaining to the form, material, color, use, possession, and display of such licenses. [1955 c 36 § 77.32.090. Prior: 1947 c 275 § 101; Rem. Supp. 1947 § 5992-110.]

77.32.101 Resident state hunting and fishing license. Any resident may by paying the sum of fourteen dollars obtain a state hunting and fishing license, which shall entitle the holder thereof to hunt and fish in any county of the state until the first day of January next following the date of its issuance, when it is lawful to hunt or fish therein. [1975 1st ex.s. c 15 § 20.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.104 Resident state hunting license. Any resident may by paying the sum of seven dollars and fifty cents obtain a state hunting license which shall entitle the holder thereof to hunt in any county of the state until the first day of January next following the date of its issuance, when it is lawful to hunt therein. [1975 1st ex.s. c 15 § 21.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.106 Resident state fishing license. Any resident may by paying the sum of eight dollars and fifty cents obtain a state fishing license which shall entitle the holder thereof to fish in any county of the state until the first day of January next following the date of its issuance, when it is lawful to fish therein. [1975 1st ex.s. c 15 § 22.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.111 Resident county hunting and fishing license. Any resident may by paying the sum of nine dollars obtain a hunting and fishing license, which shall entitle the holder thereof to hunt and fish within the county in which he resides and for which the license is issued until the first day of January next following the date of issuance, when it is lawful to hunt or fish therein. [1975 1st ex.s. c 15 § 23.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 75.32.032.

77.32.114 Resident county fishing license. Any resident may by paying the sum of seven dollars obtain a fishing license which shall entitle the holder thereof to fish within the county in which he resides and for which the license is issued until the first day of January next following the date of issuance, when it is lawful to fish therein. [1975 1st ex.s. c 15 § 24.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.120 Allocation of receipts from resident licenses. Twenty percent of all moneys received from the sale of resident state and county hunting and fishing licenses may be used to acquire lands for public hunting and fishing areas, small game habitat areas and rights of way thereto and for the development and maintenance of such areas for recreational and game purposes. [1955 c 36 § 77.32.120. Prior: 1953 c 66 § 1; 1947 c 128 § 3; Rem. Supp. 1947 § 5897-3.]

77.32.131 Nonresident state hunting license. Any nonresident or alien may by paying the sum of sixty dollars obtain a hunting license which shall entitle the holder thereof to hunt in any county of the state until the first day of January next following the date of issuance, when it is lawful to hunt therein. [1975 1st ex.s. c 15 § 25.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.151 Nonresident state fishing license. Any nonresident or alien may by paying the sum of twenty-four dollars obtain a state fishing license, which shall entitle the holder thereof to fish in any county of the state until the first day of January next following the date of issuance, when it is lawful to fish therein. [1975 1st ex.s. c 15 § 26.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.161 Transient's limited state fishing license. Any nonresident or alien who is temporarily sojourning in the state may by paying the sum of seven dollars and twenty-five cents obtain a state fishing license, which shall entitle the holder thereof to fish in any county of the state for a period of seven days following the date of its issuance, when it is lawful to fish therein: *Provided*, That the license under this section shall not entitle the holder thereof to fish for steelhead during the winter steelhead seasons as established by rule or regulation of the commission. [1975 1st ex.s. c 15 § 27.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.185 Fresh water sport fishing licenses—Use of funds. All funds accruing to the state of Washington from the sale of fresh water sport fishing licenses shall be used exclusively to defray the expenses of the administration and operations of the state department of game and shall not be diverted to any other purpose. [1955 c 36 § 77.32.185. Prior: 1951 c 124 § 2.]

77.32.191 Trapper's license. Any resident may by paying the sum of eleven dollars obtain a state trapping license which shall entitle the holder thereof to trap furbearing animals for their hides or their pelts only, within any county of the state until the first day of April next following the date of its issuance, at any time when it is lawful to trap such animals. [1975 1st ex.s. c 15 § 28.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.195 Nonresident's or alien's trapper's license. Any nonresident or alien may by paying the sum of fifty dollars obtain a state trapping license which shall entitle the holder thereof to trap furbearing animals for their hides or their pelts only, within any county of the state until the first day of April next following the date of its issuance, at any time when it is lawful to trap such animals. [1975 1st ex.s. c 15 § 14.]

77.32.197 Trapping license—Training program or examination requisite for issuance to initial licensee or juvenile. Before granting a trapping license to any person who is purchasing a license for the first time or who is under eighteen years of age the commission shall require that the person either present a certificate showing that the holder has satisfactorily completed a course of instruction in safe, humane, and proper trapping techniques or pass an examination given by the commission to establish that the applicant has the requisite knowledge concerning humane, safe, and proper trapping techniques.

The commission shall establish a program to properly train persons in safe, humane, and proper trapping techniques including the use of trapping devices designed to painlessly capture or instantly kill. For this purpose the commission shall cooperate with national and state animal, humane, firearm safety, and trapping organizations in the development of a curriculum. Upon successful completion of the course every trainee shall be furnished a trapper's training certificate signed by the authorized

instructor which shall satisfy the certification requirement of this section for obtaining a trapping license. [1977 c 43 § 1.]

77.32.201 Taxidermist's license. Any person may by paying the sum of eleven dollars obtain a license, which shall entitle him to practice taxidermy for profit in any county of the state until the first day of January next following the date of its issuance. [1975 1st ex.s. c 15 § 29.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.211 Fur dealer's license. Any person may, by paying the sum of eleven dollars, obtain a license, which shall entitle the holder thereof to purchase, receive, or resell raw furs for profit in any county of the state until the first day of January next following the date of its issuance. [1975 1st ex.s. c 15 § 30.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.220 Records and reports of taxidermists and fur dealers. All licensed taxidermists and fur dealers shall permit inspection of their records by the director or his duly authorized representatives at reasonable times concerning all dealings regarding wild animals, wild birds, or game fish and shall make such reports containing such information as may be required by rule and regulation of the commission. [1955 c 36 § 77.32.220. Prior: 1947 c 275 § 111; Rem. Supp. 1947 § 5992–120.]

77.32.226 Fishing guide license—Rules, records, reports. A fishing guide license shall be obtained by every person who offers services or who performs the services of a professional guide for others in the taking of game fish.

The fee for such license is seventy-six dollars for a resident and one hundred fifty dollars for a nonresident or alien which shall entitle the holder thereof to act as a fishing guide in any county of the state until the first day of January next following the date of its issuance.

The commission may adopt rules and regulations requiring records to be kept and reports to be made by fishing guides concerning the activities of their clients with respect to the time, manner, and place of taking any game fish by such clients, the quantities taken by them, and such other information as may be helpful in enforcing the provisions of the game code or the rules and regulations of the commission. Such rules and regulations may prescribe the form of such records and reports and may require fishing guides to keep such records current while performing their services, and to display the same, and may authorize the director to prepare and distribute to fishing guides the forms for such records and reports. [1975 1st ex.s. c 15 § 31.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.230 Free licenses—Certain veterans—Blind persons. Any bona fide resident of this state who is a veteran of the Spanish-American War, or any person

sixty-five or more years of age who is an honorably discharged veteran of the United States military or naval forces having a service-connected disability and who has been a resident of this state for five years, upon the making of an affidavit to such effect, shall be given a state hunting and fishing license free of charge upon application therefor: *Provided*, That the applicant pays the statutory agent's fee for such license.

Any person who is blind shall be issued a fishing license free of charge except for the statutory agent's fee. Such license shall be renewable annually under the same conditions. Any separate tags or punch cards which may be required by law shall not be deemed to be included with the free fishing license and must be purchased separately by any person receiving a license pursuant to this section. [1973 1st ex.s. c 58 § 1; 1961 c 94 § 2; 1959 c 245 § 2; 1955 c 36 § 77.32.230. Prior: 1947 c 275 § 112; Rem. Supp. 1947 § 5992-121.]

77.32.240 Permits for scientific purposes. The director may issue permits limited as to number and duration for the collection of wild birds, their nests, and eggs, game animals, fur-bearing animals, or game fish for scientific purposes only, within certain game areas or throughout the state. Before any such permit is issued, the applicant therefor shall file an application in writing stating his name, age, and place of residence. The application shall be accompanied by a certificate signed by the president or the curator of the museum of either the University of Washington or the Washington State University certifying that the applicant is a person of good moral character and is possessed of sufficient scientific knowledge to warrant the issuance of the permit. The applicant shall file a bond running to the state with good and sufficient surety, to be approved by the director, in the penal sum of one thousand dollars, and conditioned for the faithful compliance with all the provisions of the permit and of this section. The director may issue permits without bond to any accredited representative of any museum or institute of natural history of the United States or any state or county presenting credentials under the seal of such museum or institute. Permits shall be valid for the time limited therein, unless sooner revoked, but in no instance for a period of more than one year from the first day of March of the year in which they are issued.

It shall be unlawful for any person having a permit issued under this section to sell or offer for sale any specimens collected, but the holder of any such permit may exchange such specimens with any state university or any museum or institute of natural history of the United States, or any state, or any country, or with any individual holding a similar permit from this state or another state.

Every holder of such permit who violates any of the provisions of this section shall forfeit his permit and the penalty of the bond required for the issuance thereof and he shall be prohibited from being issued a similar permit for a period of one year. [1955 c 36 § 77.32.240. Prior: 1947 c 275 § 113; Rem. Supp. 1947 § 5992-122.]

77.32.245 Killer whale permit. It shall be unlawful for any person to attempt to capture or to capture killer whales, *Orcinus orca*, without first having procured from the commission a permit to be known as a killer whale permit. The fee for retaining a killer whale shall be one thousand dollars for each such whale: *Provided*, That the commission may waive the permit for any organization capturing a killer whale for scientific purposes and not for profit. Said fees shall be credited to the general fund. [1971 ex.s. c 166 § 7.]

77.32.250 Licenses nontransferable. Licenses issued under this title shall not be transferable. Any person hunting, trapping, or fishing, shall, upon the demand of the director, any game protector, deputy game protector, ex officio game protector, sheriff, constable, or police officer, exhibit his license to such officer, and write his name for the purpose of comparison with the signature on the license, and his failure or refusal to exhibit his license and write his name upon demand shall be prima facie evidence that such person has no license or is not the person named in the license in his possession. [1955 c 36 § 77.32.250. Prior: 1947 c 275 § 114; Rem. Supp. 1947 § 5992-123.]

77.32.256 Duplicate licenses and permits. In the case of loss, mutilation or destruction of a license certificate or permit certificate issued under the provisions of Title 77 RCW, the director shall issue a duplicate thereof upon proof of the facts and payment of a fee of two dollars. [1975 1st ex.s. c 15 § 32.]

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.032.

77.32.260 Forfeiture of license by judicial decree. Upon conviction of any person of a violation of any provision of this title, or rule or regulation of the commission, the judge or justice of the peace may, in addition to the penalty imposed by law, forfeit the license of such person. Upon subsequent conviction of any such person of any violation of any provision of this title or rule or regulation of the commission, the forfeiture of such license shall be mandatory. The commission may by rule and regulation prohibit the issuance of a license to any person convicted two or more times of any such violation or prescribe the conditions under which such license may be issued. [1955 c 36 § 77.32.260. Prior: 1947 c 275 § 115; Rem. Supp. 1947 § 5992-124.]

77.32.270 Suspension of sentence. Any judge or justice of the peace may suspend the whole or any part of any fine or sentence imposed by him upon any person found guilty of violating any of the provisions of this title or any rule or regulation of the state game commission. [1955 c 36 § 77.32.270. Prior: 1947 c 275 § 116; Rem. Supp. 1947 § 5992-125.]

77.32.280 Revocation for shooting person or livestock. The director shall revoke the hunting license of any person who shoots any other person or any domestic livestock while hunting. No hunting license shall thereafter be reissued to such person unless the commission,

after a hearing held at one of its regular meetings, authorizes the issuance of such license, and providing the licensee shall have paid for all liquidated damages caused by the wrongful shooting. Any person may appeal to the superior court of the county of his residence from any decision of the commission, providing notice of such appeal is served on the commission and filed in said court within thirty days following the refusal of the commission to issue such license. [1955 c 36 § 77.32-.280. Prior: 1949 c 44 § 1; Rem. Supp. 1949 § 5992-124a.]

77.32.290 Revocation of hunting license for violation of RCW 77.16.020 or 77.16.030—Appeal. In addition to any other penalties provided by law, the director shall revoke the hunting license of any person who is convicted of violating RCW 77.16.020 or 77.16.030 relating to elk, moose, cougar, antelope, mountain goat, mountain sheep, caribou, bear or deer. Forfeiture of bail on two occasions during any five-year period for violations of RCW 77.16.020 or 77.16.030 shall constitute the basis for a revocation under this section.

No hunting license shall thereafter be reissued to such person for a period of two years from the date of revocation unless the commission, after a hearing held at one of its regular meetings, authorizes the issuance of such license.

Any person who has had his license revoked or has been denied reissuance pursuant to this section may appeal such decision as provided in chapter 34.04 RCW. [1975 1st ex.s. c 6 § 1.]

77.32.300 Unlawful purchase or possession of game license or other document—Penalty. (1) It is unlawful to purchase, obtain, or possess or attempt to purchase or obtain a hunting, fishing, or trapping license, permit, tag, or other document issued by or under the authority of the department of game:

(a) By using false information; or

(b) After a notification by the department or a court of the revocation or forfeiture of an existing license, permit, tag, or other document: *Provided*, That a person may purchase a license, permit, tag or other document that is not authorized by the same section of Title 77 RCW as the revoked document; or

(c) In excess of one license, permit, tag, or other document per license year except as authorized by statute or game commission regulation: *Provided*, That a duplicate document may be acquired upon the filing of a notarized affidavit showing loss or destruction of the document.

(2) A person violating this section is guilty of a gross misdemeanor and upon conviction shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year, or by both such fine and imprisonment. [1979 1st ex.s. c 127 § 1.]

Chapter 77.40 SHOOTING GROUNDS

Sections

77.40.010	Public shooting grounds—Skagit county.
77.40.030	Deed of tidelands—Mason county.
77.40.040	Governor to execute deed.
77.40.050	Use as public shooting grounds.
77.40.060	Rules and regulations.
77.40.070	Public shooting grounds—Skagit and Snohomish counties.
77.40.080	Grounds withdrawn from sale or lease.
77.40.090	Certain tidelands in Skagit, Snohomish, and Island counties.

77.40.010 Public shooting grounds—Skagit county. The following described tidelands situated in Skagit county, to wit: All tidelands of the second class, including detached tidelands, owned by the state situated in front of, adjacent to or abutting upon section 7, township 33 north, range 3 east, Willamette Meridian, lying south of the north line of said section 7, produced west, north of the south line of said section 7, produced west, and east of a line parallel to and one mile west of the east line of said section 7, are hereby declared to be proper for use as a public shooting grounds. [1955 c 36 § 77.40.010. Prior: 1941 c 165 § 1; Rem. Supp. 1941 § 7993-4.]

77.40.030 Deed of tidelands—Mason county. The commissioner of public lands shall certify, in the manner now provided by law in other cases, to the governor, for deed to the department, all of the following described tidelands, situate in Mason county, to wit: Beginning at a point in front of section 6, township 21 north, range 3 west, W.M., which is S 44° 30' W 920 feet distant from the meander corner on the north line of said section and running thence S 4° 10' E 1073.5 feet, S 13° 10' W 1269.7 feet, S 74° 40' W 670 feet and S 27° 32' W 1125 feet to a point which is N 45° 50' E 1932 feet distant from the southwest corner of said section 6; thence N 9° 30' W 3530 feet and east 1960 feet to said point of beginning, containing an area of 104.68 acres according to the plat thereof on file in the office of the commissioner of public lands subject, however, to a right of way for transmission line over said tract granted to the city of Tacoma. [1955 c 36 § 77.40.030. Prior: 1941 c 190 § 1; Rem. Supp. 1941 § 7993-6.]

77.40.040 Governor to execute deed. The governor shall execute, and the secretary of state shall attest, a deed conveying to the department all of the tidelands described in RCW 77.40.030. [1955 c 36 § 77.40.040. Prior: 1941 c 190 § 2; Rem. Supp. 1941 § 7993-7.]

77.40.050 Use as public shooting grounds. All of the tidelands described in RCW 77.40.030 are granted to the department to be used as a public shooting grounds and for no other purposes; and in case the department attempts to use or permits the use of such lands, or any portion thereof, for any other purpose, or in the event that the lands are no longer used as a public shooting grounds, they shall forthwith revert to the state and the

department shall certify such reversion to the commissioner of public lands. [1955 c 36 § 77.40.050. Prior: 1941 c 190 § 3; Rem. Supp. 1941 § 7993-8.]

77.40.060 Rules and regulations. The department may make rules and regulations in relation to the use of such tidelands for the purposes specified. [1955 c 36 § 77.40.060. Prior: 1941 c 190 § 4; Rem. Supp. 1941 § 7993-9.]

77.40.070 Public shooting grounds—Skagit and Snohomish counties. The following described tidelands situated in Skagit and Snohomish counties, to wit:

All tidelands of the second class, owned by the state, situate in front of, adjacent to, or abutting upon the following described uplands:

Lots 3, 4, 5, 6, 7, 8, 9, and 10, section 25, township 33 north, range 3 east, W.M., with a frontage of 280.40 lineal chains, more or less; also

Lots 10 and 11 and the west side of lots 9 and 12, section 30, township 33 north, range 4 east, W.M., with a frontage of 125.56 lineal chains, more or less; also

Lot 3 and the west side of lots 2 and 4, section 31, township 33 north, range 4 east, W.M., with a frontage of 54.80 lineal chains, more or less; also

All detached tidelands of the second class, owned by the state, lying within or in front of sections 20, 21, 22, 25, 26, 27, 35, and 36, township 33 north, range 3 east, W.M., lots 10 and 11 and the west side of lots 9 and 12, section 30 and section 31, township 33 north, range 4 east, W.M., and section 1, township 32 north, range 3 east, W.M., lying northeasterly of a line running southeasterly from a point one mile west of the northeast corner of said section 20 to a point one mile west of the quarter section corner on the south line of said section 1, are hereby declared to be suitable and proper for use as a public shooting grounds. [1955 c 36 § 77.40.070. Prior: 1945 c 179 § 1; Rem. Supp. 1945 § 7993-5a.]

77.40.080 Grounds withdrawn from sale or lease. Upon the filing with the commissioner of public lands of a certificate showing that such lands are about to be used for a public shooting grounds by the department, the lands shall be withdrawn from sale or lease and may be thereafter used as a public shooting grounds under the control of the department: *Provided*, That they may be used by the commissioner of public lands for booming purposes. Should the department no longer desire to use such lands for such purposes it shall certify such fact to the commissioner of public lands, and the lands shall thereafter be under the supervision, care, and control of the commissioner of public lands and subject to sale or lease as provided by law. [1955 c 36 § 77.40.080. Prior: 1945 c 179 § 2; Rem. Supp. 1945 § 7993-5b.]

77.40.090 Certain tidelands in Skagit, Snohomish, and Island counties. The commissioner of public lands shall withdraw from sale or lease, except lease for the production of oysters or for booming or industrial uses: *Provided*, That the director of game has approved such industrial uses as not being generally incompatible with the primary function of these lands as public shooting

grounds, the following described second class tidelands and detached tidelands within the boundaries hereinafter set forth: Those tidelands situate in front of, adjacent to, or abutting upon: government lots 3, 4 and 5, section 28 and government lot 1, section 27 and government lots 1, 2, 3 and 4, section 34, township 35 north, range 2 east, W.M., and government lots 1, 2 and 3, section 3, township 34 north, range 2 east, W.M., excepting therefrom the portion deeded by the state of Washington to the Great Northern Railway Company on December 30, 1941.

The commissioner of public lands shall withdraw from sale or lease, except lease for the production of oysters or for booming purposes, the following described second class tidelands and detached tidelands within the boundaries hereinafter set forth:

Those tidelands other than tidelands described above in this section lying within an area beginning at a point on the meander line at the Skagit-Whatcom line, thence following the meander line in its general southerly direction to the north boundary of the Swinomish Indian Reservation, thence westerly along the north line of said Indian reservation to the base of Marches Point, thence northerly along the meander line to the north meander corner on the west line of section 28, township 35 north, range 2 E., W.M., thence north to the Whatcom county line, thence easterly along said county line to the point of beginning.

Also, all tidelands of the second class, including detached tidelands in Skagit county lying south of the main channel of the Swinomish Slough.

Also, those tidelands in Snohomish and Island counties located in township 32 north, range 3 E., W.M.

Also, those tidelands lying in front of sections 1, 2 and 11 and 12, township 31 north, range 3 E., W.M., in Snohomish county.

All the tidelands described in this section shall be available for use as public shooting grounds under the direction and control of the state game commission. [1961 c 190 § 1; 1955 c 36 § 77.40.090. Prior: 1951 c 77 §§ 1, 2.]

Chapter 77.98 CONSTRUCTION

Sections	
77.98.010	Continuation of existing law.
77.98.020	Title, chapter, section headings not part of law.
77.98.030	Invalidity of part of title not to affect remainder.
77.98.040	Repeals and saving.
77.98.050	Emergency—1955 c 36.

77.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1955 c 36 § 77.98.010.]

77.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or

subsection headings, as used in this title do not constitute any part of the law. [1955 c 36 § 77.98.020.]

77.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1955 c 36 § 77.98.030.]

77.98.040 Repeals and saving. The following acts or parts of acts

- (1) Chapter 65, Laws of 1953;
- (2) Chapter 66, Laws of 1953;
- (3) Chapter 75, Laws of 1953;
- (4) Chapter 127, Laws of 1953;
- (5) Chapter 77, Laws of 1951;
- (6) Chapter 124, Laws of 1951;
- (7) Chapter 126, Laws of 1951;
- (8) Chapter 262, Laws of 1951;
- (9) Chapter 138, Laws of 1949;
- (10) Chapter 142, Laws of 1949;
- (11) Chapter 205, Laws of 1949;
- (12) Chapter 238, Laws of 1949;
- (13) Chapter 125, Laws of 1947 and Chapter 77.36

RCW;

- (14) Chapter 126, Laws of 1947;
- (15) Chapter 127, Laws of 1947;
- (16) Chapter 128, Laws of 1947;
- (17) Chapter 130, Laws of 1947;
- (18) Chapter 138, Laws of 1947;
- (19) Chapter 275, Laws of 1947;
- (20) Chapter 179, Laws of 1945;
- (21) Chapter 257, Laws of 1943;
- (22) Chapter 165, Laws of 1941;
- (23) Chapter 190, Laws of 1941;
- (24) Chapter 140, Laws of 1939;

are each repealed but such repeal shall not be construed as affecting any existing right acquired under the provisions of the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder. [1955 c 36 § 77.98.040.]

77.98.050 Emergency—1955 c 36. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1955 c 36 § 77.98.050.]

REVISED CODE OF WASHINGTON

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CERTIFICATE

The 1979 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with the provisions of RCW 1.08.037, certified to comply with the current specifications of the committee.

(signed)

Robert L. Charette, Chairman
STATUTE LAW COMMITTEE

NOTES